SUBJECT: Application for a Change in Zoning for the Lands Located at 929 West 5th Street (Hamilton) (PED09202) (Ward 8)

RECOMMENDATION:

That approval be given to Zoning Application ZAR-08-054, by Paul Silvestri, Owner, for a change in zoning from the “AA” (Agricultural) District to the “C” (Urban Protected Residential, etc.) District for the rear portion of lands located at 929 West 5th Street, as shown on Appendix “A” to Report PED09202, on the following basis:

(a) That the draft By-law, attached as Appendix “B” to Report PED09202, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

(b) That the proposed change in zoning is in conformity with the Hamilton-Wentworth Official Plan and the Hamilton Official Plan.

EXECUTIVE SUMMARY:

The purpose of the application is to provide for a change in zoning on the rear portion of the subject lands to establish uniform zoning, and to facilitate Severance Application HM/B-08:143. The application conforms to the applicable Provincial Policies and the Hamilton-Wentworth and City of Hamilton Official Plans.
BACKGROUND:

Proposal

The applicant has applied for a change in zoning on the rear portion of lands located at 929 West 5th Street from the “AA” (Agricultural) District to the “C” (Urban Protected Residential, etc.) District (see Appendix “A”) to facilitate Severance Application HM/B-08:143 (see Appendix “E” - Condition 4). The property currently has a single detached dwelling located on the front portion of the property. A temporary turning circle on Fortissimo Drive is located adjacent to the rear portion (see Appendix “C”). The intent of the application is to facilitate land assembly with the block containing the temporary turning circle on Fortissimo Drive for lot creation.

Consent Application HM/B-08:143

The purpose of Consent Application HM/B-08:143 was to sever 17.5m from the rear of the subject lands to be added to a portion of Block 19 on Registered Plan 62M-1039 (see Appendix “D”), which will allow for the conveyance of the existing single detached dwelling on the lands to be retained, and allow for a future single detached dwelling once the temporary turning circle is no longer required. Block 19 forms a part of the Blossom Estates plan of subdivision, and was originally to be deeded to the City of Hamilton at the time of registration of the plan of subdivision to accommodate the temporary turning circle on Fortissimo Drive. The temporary turning circle will be removed upon the northerly extension of Fortissimo Drive and the surplus lands being deeded back to the developer. The temporary turning circle was constructed on Block 19, but the lands were not deeded to the City.

The proposed severance was not supported by staff, as it would result in the creation of a lot fronting entirely on a temporary turning circle, as well as a remnant parcel (Part 4 on Appendix “C”) that would not meet the minimum requirements for lot size in the “C” (Urban Protected Residential, etc.) District without further land assembly. The application was tabled by the Committee of Adjustment, at their meeting of November 20, 2008, pursuant to staff’s recommendation. The applicant entered into discussions with the City to resolve the issue of the temporary turning circle on Block 19, and to facilitate the proposed severance without permitting construction on the proposed new lot until the temporary turning circle has been removed. As a result of these discussions, on April 28, 2009, the applicant deeded the lands containing the temporary turning circle on Fortissimo Drive, as well as a one foot reserve to the City of Hamilton. The dedication of these lands, and the one foot reserve, will ensure that no construction is permitted on the parcel to be severed until such time as the temporary turning circle is removed. The severance application was then brought back to the Committee of Adjustment on June 4, 2009, and approved with several conditions, including a condition that Rezoning Application ZAR-08-054 receive final approval, to the satisfaction of the Manager of Development Planning (see Appendix “E” - Condition 4).
Details of Submitted Application:

**Location:** 929 West 5th Street

**Owner/Applicant:** William Baxter

**Property Description:**
- **Frontage:** Approximately 15.24 metres
- **Depth:** Approximately 53.3 metres
- **Area:** 812.3 square metres

EXISTING LAND USE AND ZONING:

<table>
<thead>
<tr>
<th>Subject Lands</th>
<th>Existing Land Uses</th>
<th>Existing Zoning</th>
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<tbody>
<tr>
<td></td>
<td>Single Detached Residential</td>
<td>“C” (Urban Protected Residential, etc.) District and “AA” (Agricultural) District</td>
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</tbody>
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<thead>
<tr>
<th>Surrounding Lands</th>
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<tr>
<td><strong>North</strong></td>
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<tr>
<td>Single Detached Residential</td>
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</tbody>
</table>

| **South**         |
| Single Detached Residential | “C” (Urban Protected Residential, etc.) District |

| **East**          |
| Vacant Parcel, and Kernighan Neighbourhood Park | “C” (Urban Protected Residential, etc.) District Neighbourhood Park (P1) Zone (By-Law 05-200) |

| **West**          |
| Single Detached Residential | “C” (Urban Protected Residential, etc.) District |

ANALYSIS/RATIONALE:

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

   (i) It is consistent with the Provincial Policy Statement;

   (ii) It conforms with the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan;
SUBJECT: Application for a Change in Zoning for the Lands Located at 929 West 5th Street (Hamilton) (PED09202) (Ward 8) - Page 4 of 7

(iii) It is compatible with the existing and planned uses in the surrounding area; and,

(iv) It implements a condition of approval for Severance Application HM/B-08:143 (see Appendix “E” - Condition 4).

2. The proposed rezoning of the property is supportable, as it conforms to the “Residential” policies of the Hamilton Official Plan by facilitating the complete and orderly development of a Residential neighbourhood.

3. The applicant has dedicated the lands occupied by the temporary turning circle on Fortissimo Drive, as well as a one foot reserve, to the City, in exchange for the severance of the requested portion from 929 West 5th to be added to the portion of Block 19, being retained by the applicant. Upon the connection of the northerly portion of Fortissimo Drive with the southerly portion, the temporary turning circle will be removed and the lands occupied by the turning circle and the one foot reserve deeded back to the applicant. As it stands, the proposed new lot would not receive approval for a building permit until the temporary turning circle is removed.

**ALTERNATIVES FOR CONSIDERATION:**

Should the application be denied, Severance Application HM/B-08:143 would fail, and the property would remain as it is today.

**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 change in zoning.

**POLICIES AFFECTING PROPOSAL:**

**Provincial Policy Statement**

The application has been reviewed with respect to the Provincial Policy Statement (PPS). The application is consistent with the policies that promote healthy, liveable, and safe communities (Policy 1.1.1). The proposal is consistent with the principles and policies of the PPS.
Hamilton-Wentworth Official Plan

The subject property is designated "Urban Area" within the Hamilton-Wentworth Official Plan. The proposal conforms to Policy C-3.1, which requires compact urban form and a firm Urban Area boundary. The proposed rezoning will permit additional residential development within the existing Urban Area boundary. Therefore, the proposal conforms to the Hamilton-Wentworth Official Plan.

City of Hamilton Official Plan

The subject property is designated “Residential” on Schedule “A” of the City of Hamilton Official Plan. The following Policies, among others, apply:

“A.2.1 It is the intent of this Plan to ensure that the RESIDENTIAL USES of land is sufficient to accommodate anticipated population growth and changing demands for RESIDENTIAL development of varies styles and densities, while ensuring the maintenance of amenities for residents. As well, the Plan is intended to ensure that new RESIDENTIAL development or redevelopment is appropriately located; is compatible with the surrounding development; is not subjected to noxious impacts; and achieves the conservation and efficient use of energy;

A.2.1.1 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 preferences will be given to the locating of similar densities of development together; and,

C.7.3 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.”

Based on the foregoing, the proposal conforms to the “Residential” designation of the City of Hamilton Official Plan.

Kernighan Neighbourhood Plan

The subject property is designated “Single and Double” Residential in the Kernighan Neighbourhood Plan. The severance facilitated by this rezoning application would maintain the proposed road pattern for the Kernighan Neighbourhood Plan. Based on the foregoing, the proposal implements the Kernighan Neighbourhood Plan.

Urban Hamilton Official Plan

The proposed use has been reviewed with regard for the policies within the New Urban Hamilton Official Plan, which was adopted by Council on July 9, 2009, but is awaiting Ministerial Assent. The following comments are, therefore, provided for information purposes only.
The subject property is designated “Neighbourhoods” in the Urban Hamilton Official Plan. The proposed change in zoning conforms to the general policy goals of the Neighbourhoods Designation, and will facilitate the continued orderly development of the Kernighan Neighbourhood.

**RELEVANT CONSULTATION:**

The following Departments and Agencies had no comments or objections:

- Budget and Finance Division, Corporate Services Department.
- Strategic and Environmental Planning Section, Capital Planning and Implementation Division, Public Works Department.
- Traffic Engineering and Operations Section, Public Works Department.
- Hamilton Municipal Parking Services.
- Hamilton Police Services.
- Bell Canada.
- Hydro One Networks.

**Public Consultation**

It should be noted that Severance Application HM/B-08:134 was submitted concurrently with the subject Zoning By-law Amendment Application (ZAR-08-054) and, in accordance with Council’s Public Participation Policy, would not necessitate circulation of the subject zoning application. However, as this application was tabled by the Committee of Adjustment on November 20, 2008, and in order to provide further clarity for the public, staff pre-circulated the subject Zoning By-law Amendment Application to 226 property owners within 120 metres of the subject property on December 12, 2008.

The Severance Application was re-scheduled and approved on June 4, 2009. It is noted that no interested parties appeared at the Committee of Adjustment and, to date, the Department has received no response from the circulation of the subject zoning 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, and the posting of a sign on the property.
By evaluating the “Triple Bottom Line”, (community, environment, 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
The proposed rezoning of the residual agricultural parcel will permit the creation of a new building lot, and support orderly development.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
The proposed rezoning will not result in any environmental impact, and is within a defined Urban Boundary.

Economic Well-Being is enhanced. ☑ Yes ☐ No
The proposed rezoning is to facilitate the creation of a new residential lot, and the construction of a single detached dwelling.

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

:JMB
Attachs. (5)
Location Map

File Name/Number: ZAR-08-054
Date: November 26, 2008
Appendix "A"

Subject Property
929 West 5th Street

Change in zoning from the "AA" (Agricultural) District to the "C" (Urban Protective Residential, etc.) District.

Ward 8 Key Map
CITY OF HAMILTON

BY-LAW NO._______

To Amend Zoning By-law No. 6593 (Hamilton),
respecting lands located at 929 West 5th Street

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

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the “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 the Council of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) 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 09-_______ of the Economic Development and Planning Committee at its meeting held on the _______ day of _____________, 2009, 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 Sheet No. W-9c of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), is amended by changing from the “AA” (Agricultural) District to the “C” (Urban Protected Residential, Etc.) District, the lands the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”.
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 ____, 2009.

__________________________________________
Fred Eisenberger
Mayor

__________________________________________
Kevin C. Christenson
Clerk

ZAR-08-054
Schedule "A"

Map Forming Part of By-Law No. 09-_____ to Amend By-law No. 6593

Subject Property
929 West 5th Street

Change in zoning from the "AA" (Agricultural) District to the "C" (Urban Protected Residential, etc.) District.
SKETCH of Severance
No. 929 WEST 5th ST.
HAMILTON, ON.
SCALE: 1:500m

# 921

(BLOCK 19)

# 240

PART 1
36.0 m²

# 925

(TO BE RETAINED) 36.0 m²

# 929

PART 2
TO BE SEVERED

PART 3
TO BE ADDED TO

# 983

# 937

PART 4
TO BE RETAINED

# 252

# 256

# 240

FORTISSIMO DRIVE

WEST 5th STREET

16.24 m

13.5 m

17.5 m

15.24 m

12.65 m

10.00 m

8.00 m

25.00 m

75.00 m

150.00 m

SEPT 24, 2008
Appendix "E" to Report PED09202 (Page 1 of 2)

Committee of Adjustment
Hamilton City Centre
4th floor, Suite 400, 77 James St. N.,
Hamilton, ON L8R 2K3
Telephone (905) 546-4234, ext. 4221
Fax (905) 546-4202

Hamilton

Committee of Adjustment

Notice of Decision

Application for Consent Land Severance

Application No. HM/B-08:143
Submission No. B-143/08

In the Matter of The Planning Act, R.S.O. 1990, Chapter P13, Section 53(1);

And in the Matter of the Premises known as Municipal number 929 West 5th Street, in the City of Hamilton;

And in the Matter of an Application, As Amended, by the agent William Baxter on behalf of the owner Paul Silvestri, for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of a parcel of land (Parts 8 & 9 on 62R-18422) measuring 15.24m x 36.73m containing an existing single family dwelling for residential purposes, and to retain an irregular-shaped vacant parcel of land (Parts 1, 6 & 7 on 62R-18422) having a frontage of 14.82m and a depth of 30.11m for future single family residential purposes.

Note: Parts 1, 6 and 7 are to be retained until such time as Fortissimo Drive is extended and the temporary turning circle is removed, and the City returns title of Parts 2, 3, 4 and 5 to the owner.

The Decision of the Committee is:

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

1. The proposal does not conflict with the intent of the Hamilton-Wentworth and City of Hamilton Official Plans.

2. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.

3. The Committee considers the proposal to be in keeping with development in the area.

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

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.

2. The owner/applicant shall agree to include the following warning clause in the consent/development agreement and in all purchase and sale and/or lease/rental agreements:

"Purchasers/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality's and the Ministry of the Environment's noise criteria."

3. The lands to be retained (Parts 1, 6 & 7 on Plan 62R-18422) shall be registered in the same name and title.

4. That rezoning application ZAR-08-054 receive final approval to the satisfaction of the Manager of Development Planning.

5. The owner shall demonstrate that the lands to be retained (Part 1, 6, & 7 on Reference Plan No. 62R-18422) comply with all the provisions of the Urban Protected Residential, eta. "C" District.

6. The owner shall submit survey evidence that the existing dwelling will conform to the requirements of the Zoning By-Law or alternatively apply for and receive final approval of any variances from the requirements of the Zoning By-Law as determined necessary by the Planning and Economic Development Department (Building Services Division).

7. The owner shall demolish all buildings or structures straddling the proposed property line or located on the remnant lands, to the satisfaction of the Planning and Economic Development Department (Building Services Division). May be subject to a demolition permit issued in the normal manner.
8. The owner shall dedicate Part 9 as noted on Registered Plan 62R-18422 to the City of Hamilton by deed for road widening purposes, to the satisfaction of the Planning and Economic Development Department, Development Engineering (West) Division.

9. The owner shall enter into and register on title of the lands, a Consent Agreement with the City of Hamilton to deal with the grading and drainage on the subject lands to the satisfaction of the Manager of Engineering Design and Construction. The applicant/owner shall demonstrate to the Manager of Engineering Design and Construction that all drainage from the site shall be taken to a suitable outlet.

10. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

11. The owner shall submit to the Committee of Adjustment Office an administration fee of $15.00, payable to the City of Hamilton, to cover the cost of setting up a new tax account for the newly created lot.

DATED AT HAMILTON this 4th day of June, 2009.

M. Dudzic, Chairman  
L. Tev

C. Lewis  
D. Serwutix

D. Smith  
D. Drury

L. Goddy  
M. Switzer

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS June 11th, 2009.

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

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS July 1st, 2009.

THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.

NOTES:

1. Based on this application being approved and all conditions being met, the owner / applicant should be made aware that the lands to be conveyed (Parts 8 and 9) will remain as 829 West 5th Street, and the lands to be retained (Parts 1, 6 and 7) will be assigned the municipal address of 248 Fortissimo Drive.

2. That the owner note that the lands to be retained (Part 1, 6, & 7 on Reference Plan No. 62R-18422) cannot be developed until the owner re-occupies part 2, 3, 4, & 5 on Reference Plan No. 62R-18422 and merges Parts 1-7 on Reference Plan No. 62-18422 together.

3. The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances and the applicant is advised to conduct a Stage 1 and 2 archaeological assessment prior to such impacts in order to address these concerns and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. Mitigation, by an Ontario-licensed archaeologist, may include the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Testing and Stage 4 Mitigation may be required as determined by the Ontario Ministry of Culture. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Culture.

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