CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

Report to: Chair and Members Economic Development and Planning Committee
Submitted by: Tim McCabe
General Manager Planning and Economic Development Department

Date: October 13, 2009
Prepared by: J. Matthew Blevins (905) 546-2424, Ext. 2634

SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application SC/A-09:224, Dave and Cynthia Rimac (Owners), 34 Orr Crescent (Former City of Stoney Creek) (PED09292) (Ward 10)

RECOMMENDATION:

That Council agrees to the following actions, as detailed in Report PED09292, respecting the appeal of the City of Hamilton Committee of Adjustment Minor Variance Application SC/A-09:244 (Dave and Cynthia Rimac), 34 Orr Crescent, former City of Stoney Creek, as shown on Appendix “A” to Report PED09292, approved by the Committee of Adjustment, but recommended for denial by the Planning and Economic Development Department:

(a) That Council of the City of Hamilton proceed with the appeal to the Ontario Municipal Board (OMB) against the decision of the Committee of Adjustment to approve Application SC/A-09:244.

(b) That Council directs Legal Services and Planning staff to attend the future Ontario Municipal Board (OMB) Hearing in support of the appeal.

Tim McCabe
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

Application SC/A-09:244 was considered by the City of Hamilton Committee of Adjustment on September 17, 2009. The application was to permit the existing inground swimming pool and fence within lands zoned Open Space “OS-7” Zone and Single Residential “R2-51” Zone. The “OS-7” and “R2-51” Zones were both established as buffer zones to protect the abutting Environmentally Sensitive Area. Comments to the Committee of Adjustment from the Planning and Economic Development Department did not support the application as it was the opinion of staff that the proposed variances did not satisfy the four tests of a minor variance under Section 45(1) of the Planning Act. Furthermore, the variance is contrary to the recommendations from the Environmentally Significant Areas Impact Evaluation Group’s (ESAIEG) review of the Environmental Impact Statement (EIS), submitted in 2001 respecting the Zoning By-law Amendment application for Mapleview Estates - Phase IV. The Committee of Adjustment approved the application, subject to conditions, on September 17, 2009, (Appendix “D”). Due to the appeal period, Planning and Economic Development Department staff submitted an appeal letter and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process, subject to Council’s approval/ratification.

BACKGROUND:

Roles and Responsibilities of the Committee of Adjustment (PD02116(a))

In December 2002, City Council endorsed a staff report related to the roles and responsibilities of the Committee of Adjustment. The recommendations included the following:

“That where the Planning Act appeal periods cannot be met, the Planning and Development Department be authorized and directed to file an appeal with the Secretary Treasurer of the Committee of Adjustment, in the name of and on behalf of the City, whenever, in the opinion of staff, a Committee of Adjustment decision has the effect of adding to the uses permitted under the Zoning By-law and is deemed not to be in keeping with the intent and purpose of the By-law (emphasis added). Such an appeal shall be made subject to Council approval/ratification or withdrawal. The Planning and Development Department shall prepare a report to the Committee of the Whole. In response to such a report, the City may determine its position on the Committee of Adjustment decision and instruct staff accordingly.”

Due to the short appeal time frame regulated through the Planning Act, the prescribed fee and appeal letter were submitted to begin the appeal process, subject to approval ratification by Council.
Proposal

The subject property is located at 34 Orr Crescent (former City of Stoney Creek). The subject lands are zoned Open Space “OS-7” Zone, Single Residential “R2-51” Zone, and Single Residential “R2” Zone. The “OS-7” zone “shall only be used for uses existing at the date of passing of the By-law, in particular, conservation and woodlot”. The “R2” zone permits a single detached dwelling and uses, buildings or structures accessory to a permitted use, however, the site-specific “R2-51” zone states that “no development, including grading, shall occur within 7.5 metres, and no building or structure shall be erected within 12.5 metres of the lands zoned Open Space “OS-7” Zone.”

The application proposes to permit the existing 5.5m± x 11.0m± inground swimming pool and fence accessory to an existing single family dwelling (see Appendix “B”) notwithstanding that:

1. The inground pool will be within 2.0m of the “OS-7” Zone and a fence along the side lot lines being 0.0m from the “OS-7” Zone notwithstanding that no development, including grading, shall occur within 7.5m, and no building or structure shall be erected within 12.5m of the lands zoned Open Space “OS-7” Zone; and,

2. A fence along the side and rear lot lines of the lot shall be located within the portion zoned “OS-7” notwithstanding that the “OS-7” shall only be used for uses existing at the date of passing of the By-law, in particular, conservation and woodlot.

The application was reviewed against all applicable planning policy documents which included the Provincial Greenbelt Plan, the Niagara Escarpment Plan, the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, the Former City of Stoney Creek Official Plan, and Stoney Creek Zoning By-law 3692-92. Planning and Economic Development Department staff recommended denial of the application on the basis it did not maintain the purpose and intent of the above noted policy documents and Zoning By-law.

The Committee of Adjustment approved the application on September 17, 2009, subject to the condition that the applicant apply for, and receive final approval of, a Site Plan Control Application, to the satisfaction of the Manager of Development Planning (see Appendix “D”).

On May 29, 2009, the Owners applied to the Building Services Division for a building permit to construct a pool enclosure. A permit was issued in error on June 5, 2009, and subsequently revoked on July 22, 2009. In conjunction with the revocation of the building permit, Building Services Division issued an Order to Comply on July 22, 2009, (see Appendix “F”) requiring the removal or relocation of the swimming pool and returning the grading within 7.5m of the “OS-7” zoned lands. A second Order to Comply (see Appendix “G”) was issued on September 4, 2009, requiring the removal of the
accessory structure and pool enclosure that are within 12.5m of the lands zoned Open Space “OS-7” Zone and returning the grading within 7.5m of the “OS-7” zoned lands.

In addition, should the application be finalized, the applicant may require further variance(s) to legalize the accessory building (i.e. pool shed, which was not indicated in the subject application.

**ANALYSIS/RATIONALE:**

The zoning on the subject lands was established, as an amendment to Zoning By-law No. 3692-92, by By-law No. 03-217, passed on August 13, 2003, to facilitate the development of “Mapleview Estates - Phase 4”. Block “1” was rezoned from the Open Space “OS” Zone to the Open Space “OS-7” Zone, with a Special Exception, and Block “4” was rezoned from the Open Space “OS” Zone to the Single Residential “R2-51” Zone, with a Special Exception (see Appendix “C”), to accommodate residential development on the east side of Orr Crescent, while still protecting the existing Environmentally Significant Area (ESA).

The Open Space “OS-7” Zone only permits “uses existing at the date of passing of the By-law, in particular, conservation and woodlot”.

The Single Residential “R2-51” Zone states that no development, including grading, shall occur within 7.5m, and no building or structure shall be erected within 12.5m of the lands zoned Open Space “OS-7” Zone.

The intent of these modifications is to protect the Environmentally Sensitive Area abutting the subject lands, while still permitting residential lots to be developed on the eastern side of Orr Crescent. On August 9, 2001, the Environmentally Significant Areas Impact Evaluation Group (ESAIEG) met and reviewed the EIS submitted in support of the rezoning application for Mapleview Estates - Phase IV. The proposed revisions put before ESAIEG were specifically intended to protect the ESA and included moving the street to the west and reducing its width from 20.0m to 18.0m, plantings to reduce the impacts of edge effect along the former Hydro right-of-way (eastern boundary of the site) to discourage residents from intruding on the ESA, combined with a tree preservation plan, and an edge strategy along the former Hydro right-of-way, which includes a 6.0m “no touch” area (Lots 2-10), 7.5m “buffer” area (Lots 4-9) with minimal grading and disturbance, a 5.0m building setback (Lots 4-10), and 1.5m for Lots 2 and 3, and 7.5m building setback (Lots 1 and 2) from the top-of-bank. The final recommendation by ESAIEG was that they agreed with the proposed revisions and recommended that site plans be used for Lots 1-10 to ensure ecological compatibility and consistency of landscaping/tree plantings on the various lots, and redrawing the “no touch” buffer (minimal grading and disturbance) areas on Lots 1, 2, 9 and 10 as curved lines extending westerly to retain more land as part of the buffer. The intent being to maintain more undisturbed vegetation area within the former Hydro right-of-way, while allowing the front parts of the lots to accommodate dwellings that meet setback requirements of the Zoning By-law.
As the effect of the application is to permit the installation of an accessory inground pool and fence within the “no touch” and “buffer” areas, the proposal does not maintain the general intent and purpose of the site-specific Zoning By-law, and does not conform to the policies of the Provincial Policy Statement, Hamilton-Wentworth Official Plan, and the Stoney Creek Official Plan.

**ALTERNATIVES FOR CONSIDERATION:**

**Option 1**

Council could proceed with the appeal and direct appropriate Legal Services and Planning staff to attend the Ontario Municipal Board Hearing in opposition to the approved Minor Variance application, as recommended in this report.

**Option 2**

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment to the Ontario Municipal Board (OMB). If Council directs staff to withdraw the appeal, the minor variance will receive final approval, and may encourage other similar applications for the remaining properties on the street, which would undermine the intent of the site-specific zoning and potentially negatively impact the abutting Environmentally Sensitive Area.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** Planning and Economic Development Department staff has submitted the required fee of $125.00 to the Minister of Finance to begin the appeal process. Other than this one-time fee, the costs for the Hearing are covered by the respective Departmental Work Programs/Budgets. Therefore, no additional funds would be required.

**Staffing:** Planning staff and one representative from Legal Services would be required for preparation and attendance at the Ontario Municipal Board Hearing.

**Legal:** Potential implications for works completed up-to-date of issuance of Order(s) to Comply.

**POLICIES AFFECTING PROPOSAL:**

**Provincial Greenbelt Plan**

Section 2.2 of the Provincial Greenbelt Plan sets out that the requirements of the Niagara Escarpment Plan, established under the *Niagara Escarpment Planning and Development Act*, continue to apply and the Protected Countryside policies do not apply, with the exception of Section 3.3.
Niagara Escarpment Plan

The subject lands are located within the Niagara Escarpment Plan Area and are designated as "Escarpment Urban Area". The subject lands are outside of the Niagara Escarpment Commission’s Development Control Area, and the lands to the east are designated as “Escarpment Natural Area”. The application was circulated to the Niagara Escarpment Commission and the following comments were received:

- If the removal of trees from this property and sodding of the entire rear yard (prior to pool construction) constitutes a violation of the Subdivision Agreement, the Zoning By-law, or a Municipal Act By-law for tree preservation or site alteration, then it could be argued that the pool construction would have negatively impacted the health of the trees that lawfully should still exist there. It would follow that this application will promote development that is incompatible with the natural environment of the Escarpment, thereby conflicting Part 1.7, Development Objectives 1, 9, and possibly 7 (protection of archaeological sites) of the NEP, and should not be approved. It would further follow that development violations exist along the entire OS zone of adjacent properties, and the City should be prepared to address the entire problem beyond addressing it with this single owner.

  ➢ Staff note, based on the approved Tree Preservation and Removal Plan for Mapleview Estates - Phase IV (see Appendix “E”), it would appear that more trees and vegetation have been removed from the property than permitted.

- If the removal of trees from this property and sodding of the entire rear yard (prior to pool construction) was lawful, the pool distance from the existing bush line just east of the subject property appears to be adequately set back from the drip line of those trees. The use of that portion of the rear yard for amenities incidental to the residential use does not appear to pose a negative impact on the existing environmentally sensitive features of the area and would not be contrary to the Urban Area policies of the NEP. This would be equally possible for the other rear yards similarly zoned.

- We support the suggested condition of approval requesting site plan control. This will allow consideration of enhancing existing site conditions where they have deteriorated below expected standards. It would also be useful for the entire area should future applications for rear yard development occur on the other lots.

- Although they do not apply here, where Niagara Escarpment Development Control regulations do apply, property fencing, except where the fence height exceeds 8 feet, is not regulated, and is, therefore, accepted in all NEP designations as a permitted undertaking. We, therefore, would have no issue with the fencing variance in this case.
Provincial Policy Statement (PPS)

Policy 2.1.6 of the Provincial Policy Statement (PPS) outlines that development shall not be permitted on adjacent lands to the natural heritage feature identified (i.e. significant wetlands) unless the ecological function of the adjacent lands has been evaluated, and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions. Staff notes that the subject property is located within the Devil’s Punch Bowl Escarpment Environmentally Significant Area (ESA # 54), and that no Environmental Impact Statement was submitted with the application for minor variance and is, therefore, not consistent with the Natural Heritage Policies of the Provincial Policy Statement.

Hamilton-Wentworth Official Plan

The subject lands are designated as “Escarpment Urban Area” in the Hamilton-Wentworth Official Plan. Policy C-1.5.2 a) permits a range of uses consistent with Policy C-3.1 of the Plan for lands designated as Escarpment Urban Area. Staff notes that Policy C-3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas.

However, Policy C-1.2.2 of the Plan states that land use changes in or adjacent to Environmentally Significant Areas will only be permitted where such development:

i) Will not adversely affect, degrade, or destroy any of the qualities which are the basis for the area’s designation;

ii) Will not cause any significant impacts upon water quality and quantity; and,

iii) Will not adversely affect the implementation of any resource protection policies or plans.

The subject property is located partially within the Devil’s Punch Bowl Escarpment Environmentally Significant Area (ESA#54). To protect the ESA, its buffer, and to mitigate any impacts from the abutting residential uses, protective zoning was put in place. The “OS-7” zoning was intended to restrict development, including pools, decks, sheds, and vegetation removal within the ESA and buffer. Also, the “R2-51” zoning does not permit any development, including grading, within 7.5 metres of the “OS-7” Zone, and no building or structure within 12.5 metres of the “OS-7” Zone. The intent of these zones was to retain the existing vegetation and landforms.

Staff also notes that no Environmental Impact Statement (EIS) was completed before the work commenced to determine if the proposed uses would impact the ESA.

Based on the foregoing, the application does not conform to the policies of the Hamilton-Wentworth Official Plan.
STONEY CREEK OFFICIAL PLAN

The subject property is designated “Residential” on Schedule “A” - General Land Use Plan of the City of Stoney Creek Official Plan. The following policies, among others, apply:

“Policy 1.1.1 sets out the following objectives for the protection of Open Spaces and the Natural Environment System:

(a) To protect and preserve, in their natural state, wherever possible, those ecologically unique and significant areas within the City, which include habitat defined as Environmentally Significant Areas (ESA), Core Areas, Rehabilitation Areas, and Open Spaces.

(b) To promote sustainable development by supporting policies that achieve protection of the environment, while at the same time meeting the economic needs of present and future residents of Stoney Creek.”

In addition, the policies of the Stoney Creek Official Plan require the submission of an Environmental Impact Statement (EIS) prior to development occurring in or adjacent to an ESA (Policy 1.2.2); and,

That, “wherever possible, any loss of woodlot should be offset by encouraging the planting of appropriate quantity and quality of regionally indigenous vegetation on the development site or elsewhere, to the satisfaction of City Council (Policy 1.2.8(b)(iv)).

In preparing Environmental Impact Statements, the Stoney Creek Official Plan notes that an EIS should focus on the preservation of the integrity and long-term health of woodlots (Policy 1.2.8(b)(v)).

Based on the foregoing, the variance does not conform to the policies of the Stoney Creek Official Plan.

NEW URBAN HAMILTON OFFICIAL PLAN (FOR INFORMATION ONLY)

The subject lands are designated “Neighbourhoods” on Schedule “E-1” - Urban Land Use Designations, and “Low Density Residential 2b” on Schedule “B.7.1-1” - Western Development Area Secondary Plan of the new Urban Hamilton Official Plan, which has been approved by Council but is not yet in force and effect. The abutting lands to the east are designated “Core Areas” on Schedule “B” - Natural Heritage System, “Key Natural Heritage Feature Life Science ANSI” on Schedule “B-1” - Detailed Natural Heritage Features Key Natural Heritage Feature Life Science ANSI, “Key Natural Heritage Feature Significant Woodlands” on Schedule “B-2” - Detailed Natural Heritage Features Key Natural Heritage Feature Significant Woodlands, and “Local Natural Area Environmentally Significant Area” on Schedule “B-6” - Detailed Natural Heritage Features Local Natural Area Environmentally Significant Areas in the new Rural.
SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application SC/A-09:224, Dave and Cynthia Rimac (Owners), 34 Orr Crescent (Former City of Stoney Creek) (PED09292) (Ward 10) - Page 9 of 10

Hamilton Official Plan, which has been approved by Council but is not yet in force and effect. The following policies, among others, apply:

The Urban Hamilton Official Plan sets out that “Core Areas” are the most important component in terms of biodiversity, productivity, and ecological and hydrological functions, and that these areas are to be preserved and enhanced. The policies then set out that any development or site alteration within or adjacent to a “Core Area” shall not negatively impact their environmental features or ecological functions (Policy 2.3.2).

In addition, the policies specify that vegetation removal and encroachment into “Core Areas” shall generally not be permitted, and appropriate vegetation protection zones established to accomplish the protection and enhancement of the “Core Areas” (Policy 2.3.3).

Where the vegetation protection zone widths have not been specified, a minimum 15 metre protection zone will be established next to a Life and Earth Science Area of Natural Scientific Interest (ANSI) (Policy 2.5.10(g)).

To further protect the natural heritage features, new development and site alteration are not permitted on lands adjacent to natural heritage features unless the ecological function of the lands has been evaluated, and the proposed works shown to not have a negative impact on the natural features or their ecological functions (Policy 2.5.5).

The policies of the new Urban Hamilton Official Plan set out that the uses permitted within the vegetation protection zones shall be limited to low impact uses such as vegetation restoration and open space, that holding tanks, impervious surfaces, and grading works shall not be permitted within the vegetation protection zone, and new development or site alteration areas shall be located outside of the vegetation protection zone. Permitted uses within the vegetation protection zone should be similar to those within the protected natural area, and the vegetation protection zone should remain in or be returned to a natural state (Policy 2.5.14).

The submission of any required Environmental Impact Statements to determine the impacts of potential development shall be completed in accordance with the relevant policies of the Urban Hamilton Official Plan (Policy 2.6.1).

In addition to the above policy directions, the Urban Hamilton Official Plan encourages sustainable forestry practices, and the protection and restoration of trees and forests, including significant woodlands (Policy 2.11.1); and,

Lands designated as “Neighbourhoods” are permitted to be used for residential dwellings, open space, and parks (Policies 3.2.3(a) and 3.2.3(b)).

Based on the foregoing, the variances would not conform to the policies of the new Urban Hamilton Official Plan.
RELEVANT CONSULTATION:

- Legal Services Division.

CITY STRATEGIC COMMITMENT:

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
Approval of the proposed variances could encourage other similar applications for other properties on the east side of Orr Crescent which, if approved, would undermine the intent of the site-specific zoning on the subject lands.

Environmental Well-Being is enhanced. ☛ Yes ☐ No
Approval of the proposed variances could result in increased negative impacts on the adjacent Environmentally Sensitive Area (ESA).

Economic Well-Being is enhanced. ☛ Yes ☐ No
There are no economic impacts resulting from the installation of the pool and enclosure.

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. (7)
Appendix "C" to Report PED09292 (Page 1 of 1)

Schedule "A"

Map Forming Part of
By-Law No. 03-217

to Amend By-Law No. 3692-92

Planning and Development Department
Hamilton

Legend

- Block 1: Lands to be rezoned from the Open Space "OS-5" Zone to the Open Space "OS-5" Zone
- Block 2: Lands to be rezoned from the Open Space "OS-3" Zone to the Open Space "OS-3" Zone
- Block 3: Lands to be rezoned from the Open Space "OS-5" Zone to the Single Residential - One "R2-4" Zone
- Block 4: Lands to be rezoned from the Open Space "OS-6" Zone to the Single Residential - Two "R2-02" Zone
- Block 5: Lands to remain Open Space "OS-5-1" Zone
- Block 6: Lands to remain Open Space "OS-5-3" Zone

North
Scale
Reference File No.
June 26, 2003

NOT TO SCALE
075-1924

Date

Drawn By
MC

This is Schedule "A" to By-Law No. 03-217

Passed the 13th day of August, 2003

[Signatures]

Mayor

[Signatures]

Djox
IN THE MATTER OF  The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 3692-92, of the City of Hamilton (formerly Stoney Creek), Sections 3.7, 6.3 and 11.2.

AND IN THE MATTER OF the Premises known as Municipal number 34 Orr Crescent, formerly in the City of Stoney Creek, now in the City of Hamilton and in an "R2" (Single Residential "R2" zone), "R2-51" (Single Residential "R2" zone - Amending By-law #03-217) and an "OS-7" (Open Space "OS" zone - Amending by-law #03-217) district;

AND IN THE MATTER OF AN APPLICATION by the agent IBI Group on behalf of the owner Dave Rimac, for relief from the provisions of the Zoning By-Law No. 3692-92, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the installation of a 5.5m x 11.0m inground swimming pool and fence accessory to an existing single family dwelling notwithstanding that:

1) The inground pool will be within 2.0m of the "OS-7" zone and a fence along the side lot lines being 0.0m from the "OS-7" zone notwithstanding that no development, including grading, shall occur within 7.5m, and no building or structure shall be erected within 12.5m of the lands zoned Open Space "OS-7" zone; and,

2) A fence along the side and rear lot lines of the lot shall be located within the portion zoned "OS-7" notwithstanding that the "OS-7" shall only be used for uses existing at the date of passing of the By-law, in particular, conservation and woodlot.

NOTE:

1) The sketch submitted show a proposed pool shed. As such, a separate application to the Committee of Adjustment will be required to allow the proposed pool shed to be within 7.5m and 12.5m of the "OS-7" zone.

THE DECISION OF THE COMMITTEE IS:

That the variances, as set out in paragraph three above, are GRANTED for the following reasons:

1. The Committee having regard to the evidence is of the opinion that the relief granted is of a minor nature.

2. The relief granted is desirable for the appropriate development of the land and building and is not inconsistent with the general intent and purpose of the By-law and the Official Plan as referred to in Section 46 of The Planning Act, 1990.

3. The Committee having regard to the evidence is satisfied that there will be no adverse impact on any of the neighboring lands.

That the said application IS GRANTED subject to the following condition:

1. That the applicant apply for, and receive final approval of, a Site Plan Control Application to the satisfaction of the Manager of Planning.

DATED AT HAMILTON this 17th day of September, 2009.

M. Dudzic (Chairman)
NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS October 7th, 2008.

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

NOTE (TO BE INCLUDED IN DECISION IF APPROVED):

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

Should deeply buried archaeological materials be found on the property during any of the above development activities the Ontario Ministry of Culture (MCL) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both MCL and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392).
Appendix “E” to Report PED09292 (Page 1 of 2)

Extract of Tree Preservation and Removal Plan for Mapleview Estates - Phase IV
Order to Comply – Zoning

Order Number: 09-197102-00 EN
Date Order Issued: July 22, 2009

Address to which Order applies:
34 ORR CRES., STONEY CREEK

Order issued to:
DAVE RIMAC
34 ORR CRES.,
STONEY CREEK ON

Take notice that the swimming pool at the above-referenced address is in contravention of the Act(s) / Regulation(s) / By-Law(s) as outlined below:

You are hereby ordered to correct the contraventions itemized below by July 30, 2009.

<table>
<thead>
<tr>
<th>Item</th>
<th>Reference</th>
<th>Description and location</th>
<th>Required action and compliance date</th>
</tr>
</thead>
</table>
| 1.   | Subsection 6.3.7 of Section 6.3 of Stoney Creek Zoning By-law No. 3692-92 as amended by special exemption R2-51, (By-law No. 03-217) | No development, including grading, shall occur within 7.5 metres, and no building or structure shall be erected within 12.5 metres of lands zoned Open Space “OS-7” Zone. | 1. Re-locate the swimming pool so that it is at least 12.5 metres from the lands zoned Open Space “OS-7” Zone, or remove the swimming pool.  
2. Restore all grading within 7.5 metres of the lands zoned Open Space “OS-7” Zone to their original condition. |

Order issued by:
Name: Jeffery Evans
BCIN: 15064

Signature: 

Telephone No.: 905.546.2424 ext. 3905

- AND TAKE NOTICE FURTHER that you as the owner / constructor / or person apparently in possession and hereby ordered to comply within 7 days.
- AND TAKE NOTICE FURTHER that in default of compliance with the foregoing, you will be liable upon conviction, to the penalties provided by the said Act / Regulation /By-Law.
### Order to Comply – Zoning

**Order Number:** 09-197112-00 EN  
**Date Order Issued:** September 04, 2009

**Address to which Order applies:**  
34 ORR CRES., STONEY CREEK

**Order issued to:**  
DAVE RIMAC  
34 ORR CRES., STONEY CREEK ON

Take notice that the accessory structure and pool fence at the above-referenced address is in contravention of the Act(s) / Regulation(s) / By-Law(s) as outlined below:

You are hereby ordered to correct the contraventions itemized below by September 11, 2009.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description and location</th>
<th>Required action and compliance date</th>
</tr>
</thead>
</table>
| 1.   | No development, including grading, shall occur within 7.5 metres, and no building or structure shall be erected within 12.5 metres of lands zoned Open Space "OS-7" Zone. | 1. Remove the accessory structure and pool fence enclosure that are within 12.5 metres of the lands zoned Open Space "OS-7" Zone  
2. Restore all grading within 7.5 metres of the lands zoned Open Space "OS-7" Zone to their original condition. |

**Order issued by:**

Name: Jeffery Evans  
BCIN: 15064  
Telephone No.: 905.546.2424 ext. 3905

- AND TAKE NOTICE FURTHER that you as the owner / constructor / or person apparently in possession and hereby ordered to comply within 7 days.
- AND TAKE NOTICE FURTHER that in default of compliance with the foregoing, you will be liable upon conviction, to the penalties provided by the said Act / Regulation / By-Law.