SUBJECT: Application for Modifications in Zoning for Lands Located at 594 and 598 Barton Street East and 134 Birch Avenue (Hamilton) (PED08061) (Ward 3)

RECOMMENDATION:

That approval be given to Zoning Application ZAR-07-073, by 698765 Ontario Inc. (Gary Zebroski), owner, for a modification to the “H” (Community Shopping and Commercial, etc.) District (Block “1”) to permit seven required parking spaces to be located off-site at 134 Birch Avenue (Block “2”); and for a modification to the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District (Block “2”) to permit the lands to be used for required parking in conjunction with permitted uses on 594 and 598 Barton Street East (Block “1”), as shown on Appendix “A” to Report PED08061, on the following basis:

(a) That Block “1” be rezoned from the “H” (Urban Protected Residential, etc.) District to the “H/S-1585” (Community Shopping and Commercial, etc.) District, Modified.

(b) That Block “2” be rezoned from the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District to the “D/S-1585” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, Modified.

(c) That the draft By-law, attached as Appendix “B” to Report PED08061, which has been prepared in a form satisfactory to the City Solicitor, not be forwarded to City Council for enactment until the property taxes are brought into good standing, to the satisfaction of the Manager of Development Planning.
(d) That the amending By-law be added to Sheet No. E-21 of the District maps, appended to and forming part of Zoning By-law No. 6593 (Hamilton).

(e) That the proposed modifications in zoning are consistent with the Provincial Policy Statement, and conform to the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan.

Tim McCabe  
General Manager  
Planning and Economic Development Department

EXECUTIVE SUMMARY:

The purpose of this application is to facilitate the expansion of the existing day nursery (Block “1”) from 36 children to 54 children, by permitting seven of the required parking spaces to be located off-site at 134 Birch Avenue (Block “2”) (see Appendix “A”).

The proposed modifications in zoning have merit and can be supported as they are consistent with the Provincial Policy Statement, and conform to the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan.

BACKGROUND:

Proposal

The applicant has applied to modify the zoning on the subject lands (see Appendix “A”) to facilitate the expansion of the existing day nursery located at 594 and 598 Barton Street East (Block “1”) from 36 children to 54 children, by permitting seven of the required parking spaces to be located off-site at 134 Birch Avenue (Block “2”).

698765 Ontario Inc. owns both the properties at 594 and 598 Barton Street East and 134 Birch Avenue. The properties are divided by a City assumed alleyway that runs east-west from Birch Avenue to Gibson Avenue (see Appendix “A”). A day nursery with a capacity of 36 children is currently being operated at 594 and 598 Barton Street East (Block “1”), and is proposed to be expanded to accommodate a total of 54 children. Hamilton Zoning By-law No. 6593 requires a minimum of one parking space for every six children who may be lawfully accommodated and, as a result, the facility requires a total of nine parking spaces.
In accordance with the *Day Nurseries Act (DNA)*, a minimum outdoor play area must be provided for each licensed child. In order to provide the required outdoor play area, the existing parking area on the east side of the building will have to be removed. As a result, Block “1” is deficient in parking and the owner is proposing to legalize the parking spaces located on Block “2” in order to provide the total number of parking spaces required to accommodate 54 children at the day nursery. The applicant has indicated that the parking spaces located on Block “2” have been used to support the commercial uses on Block “1” for a number of years.

The applicant has submitted a concept plan showing the location of the existing building at 594 and 598 Barton Street East which is currently being used as a day nursery and the outdoor play area, and the proposed off-site parking at 134 Birch Avenue (see Appendix “D”). The following zoning modifications have been included in the Draft By-law (Appendix “B”) to bring the proposal into conformity with the Zoning By-law:

- Eliminating the rear yard setback for the existing building on Block “1”.
- Reducing the number of required parking spaces from nine to eight.
- Permitting seven of the required parking spaces to be located off-site on Block “2”.
- Modifying the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District to allow parking as the only permitted use on Block “2”.
- Reducing the minimum required width and length of the parking spaces from 2.7 metres x 6.0 metres to 2.6 metres x 5.5 metres.
- Permitting one parking space to be provided and maintained within the required front yard of Block “2”.
- Permitting access to the parking spaces to be by way of the City assumed alleyway.
- Permitting manoeuvring space to be located off-site and within the City assumed alleyway.
- Reducing the minimum setback and the minimum width of the required planting strip between the parking area and the adjoining residential district on Block “2” from 1.5 metres to 1.4 metres.

**Minor Variance Application HM/A-06:250**

The owner applied for a Minor Variance Application (see Appendix “E”) in September 2006 to seek relief from the parking requirements in order to expand the existing day nursery to accommodate a total of 55 children, which would require eleven parking spaces. The application was tabled prior to the Committee of Adjustment meeting.
Minor Variance Application HM/A-06:250 (Amended)

On December 4, 2007, the owner submitted an amended Minor Variance Application to seek relief from a number of Zoning By-law requirements in order to permit a day nursery for a total of 36 children on the property located at 594 and 598 Barton Street East (Block “1” - Appendix “A”). This application was submitted despite the fact that a Rezoning Application was currently being processed. The owner stated that the Minor Variance application was submitted as an interim process to increase the number of children permitted at the facility while the Rezoning Application was being processed. The application was approved by the Committee of Adjustment on January 17, 2008 (see Appendix “F”), and became final and binding on February 7, 2008.

Details of Submitted Application

Location: 594 and 598 Barton Street East (Block “1”) and 134 Birch Avenue (Block “2”) (see Appendix “A”)

Owner: 698765 Ontario Inc. (Gary Zebroski)

Property Description (total rezoned lands):

- **Frontage:** 20.117 metres Barton Street East (Block “1”)  
  7.92 metres Birch Avenue (Block “2”)

- **Area:** 696.9 square metres (Block “1”)  
  242.8 square metres (Block “2”)

Servicing: Full municipal services

EXISTING LAND USE AND ZONING:

|                      | Existing Land Use       | Existing Zoning                                                      |
|----------------------|-------------------------|                                                                     |
| **Subject Lands**    | Institutional – Day Nursery (Block “1”) | “H” (Community Shopping and Commercial, etc.) District |
|                      | Parking (Block “2”)     | “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District |
| **Surrounding Lands**|                         |                                                                     |
| North                | Elementary School       | “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District |
ANALYSIS/RATIONALE:

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

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

   (ii) It conforms to the Hamilton-Wentworth Official Plan; and,

   (iii) It conforms to the City of Hamilton Official Plan.

2. The subject property is situated on the southeast corner of Barton Street East and Birch Avenue. The subject properties are designated “Commercial” in the City of Hamilton Official Plan. The Plan classifies the subject property as “Extended Commercial”, which permits a range of commercial uses (such as, but not limited to, banks, restaurants, garages, material suppliers, and any institutional use including day nurseries, etc.) that are intended to predominately serve the residents and pedestrians in the vicinity, with some specialized commercial uses attracting automobile borne traffic from beyond the local area. The proposal conforms to the “Commercial” policies, as stated in the Policies Affecting Proposal section of the report (see Page 10).

3. The applicant submitted a concept plan with the application, attached as Appendix “C”, which was revised after receiving comments from various City Departments and agencies. Based on the revised concept plan (see Appendix “D”) and the review of this application, staff has identified a number of modifications that will be incorporated in the amending By-law. The required modifications relate specifically to building setback, parking requirements, manoeuvring and access, as well as landscape requirements, which are addressed as follows:

   Modification for Building Setback (Block “1”):

   The applicant is proposing a rear yard setback of 0.02 metres for the building at 594 and 598 Barton Street East; whereas the “H” District provisions require a
minimum rear yard setback of 4.5 metres. The reduction is required to recognize the location of the existing building. Due to the minor reduction, it would be appropriate to eliminate the required setback only for the existing building.

Modifications for Parking and Manoeuvring Requirements:

The applicant is proposing a total of eight parking spaces; whereas the Parking and Loading Requirements of the Zoning By-law require a minimum of nine parking spaces calculated at a rate of one space per six children lawfully accommodated \((54÷6 = 9)\). The owner originally proposed to provide the required number of parking spaces (see Appendix "C"), but through review of the sketch by the Traffic Operations and Maintenance Division (Public Works Department) it was determined that one of the required parking spaces was located within the required 3.0 metre x 3.0 metre vision triangle. The parking space located within the vision triangle poses a potential risk to the safety of pedestrians and vehicles since a car parked in this area would have to reverse out over the sidewalk and onto the road to exit the parking area. Also, there would be reduced visibility if another vehicle was manoeuvring through the site or a pedestrian was walking along the sidewalk. The Municipal Parking System has advised that should there be an issue with on-site parking deficiency, additional overflow parking can be accommodated at the Municipal Parking Lot on the west side of Birch Avenue. Accordingly, a reduction to eight parking spaces can be supported.

The applicant is proposing that seven of the eight parking spaces and the associated manoeuvring area, be located off-site at 134 Birch Avenue (Block “2” - Appendix “A”); whereas the Parking and Loading Requirements of the Zoning By-law require parking and the associated manoeuvring space to be provided and maintained on the lot on which the principle use, building or structure is located. As mentioned in the Background section of this report (Page 3), the existing parking located on the east side of the building will be removed in order to accommodate an outdoor play area for the expanded day nursery. The owner has indicated that the property at 134 Birch Avenue has been used for parking in support of 594 and 598 Barton Street East for a number of years. The implementing By-law permits Block “2” to be used only for parking in conjunction with the permitted uses on Block “1”. Should the existing use (day nursery) of the property change, a maximum of seven of the required parking spaces for any permitted use under the “H” (Community Shopping and Commercial, etc.) District may still be located on Block “2”.

According to the definition of “Parking Lot, Public” in Zoning By-law No. 6593, the “G-3” (Public Parking Lots) District provisions are applicable to Block “2”, since the implementing By-law is permitting parking on the lands. The applicant is proposing that the seven parking spaces to be provided on Block “2” be located 1.45 metres from the adjoining residential district and that a 1.45 metre planting
strip be provided; whereas the Parking and Loading Requirements and the “G-3” (Public Parking Lot) District provisions of the Zoning By-law require the boundary of every parking area on a lot containing five or more parking spaces to be located not less than 1.5 metres from the adjoining residential district boundary, and that a minimum 1.5 metre wide planting strip be provided along every side lot line and rear lot line abutting a residential district or use. The purpose and intent of the setback is to provide space for landscaping and adequate separation between the adjacent residential use. This modification can be supported as it is minor, and a planting strip will be provided to buffer the adjacent residential use. The owner has noted on the concept plan (see Appendix “D”) that a new 1.8 metre privacy fence will be installed along the southerly lot line and that trees will be planted within the planting strip. Further details regarding the location and type of landscaping and fencing will be addressed through the submission of a Site Plan Control Application.

The applicant is proposing to reduce the minimum width of the parking spaces located on Block “2” from 2.7 metres to 2.6 metres wide, and the minimum length of the parking spaces located on both Blocks “1” and “2” from 6.0 metres to 5.5 metres long. The reductions in the width and length of the required parking spaces can be supported since they are consistent with the minimum size of parking spaces (2.6 metres x 5.5 metres), as permitted in the New City of Hamilton Zoning By-law 05-200.

Since the property at 134 Birch Avenue is zoned “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, a modification is required to permit one of the required parking spaces to be located within the required front yard. This modification can be supported as only a portion of space 1 (see Appendix “D”) will be located within the front yard and the owner has proposed to provide an adequate landscaped area along the street line, which will be further addressed at the Site Plan Control stage.

Modifications for Access Requirements:

The applicant has proposed to access the barrier free parking space on Block “1”, and the seven parking spaces and associated manoeuvring space on Block “2” to be located off-site by way of the City assumed alleyway; whereas the Parking and Loading Requirements of the Zoning By-law require all parking and manoeuvring spaces to have access by means of one or more access driveways located on the lot, located partly on the lot in the case of a mutual driveway, or by means of a right-of-way. A modification is required to permit access to the proposed parking to be from the City assumed alleyway. The alleyway is used by many of the surrounding properties as the route to access the rear yards of the properties where many of the property owners have parking areas. Permitting the two properties to use the alleyway as the access to the required
parking areas can be supported as it does not interfere with the functionality of the alleyway and is consistent with how the alleyway is currently being utilized.

**Modifications for Landscape Requirements:**

The applicant is proposing to not provide a planting strip along the easterly side lot line of Block “1”; whereas the “H” District provisions require a minimum 1.5 metre wide planting strip along every side lot line and rear lot line abutting a residential district or use. This modification was approved under Minor Variance Application HM/A-06:250 (Amended) on January 17, 2008, so long as the property is being used for the day nursery. Should the use of the property at 594 and 598 Barton Street change, a planting strip along the easterly lot line of Block “1” will be required in accordance with the applicable requirements of Zoning By-law No. 6593.

4. Staff received three written responses (see Appendix “G”) as a result of the pre-circulation of the application. One of the responses was in support of the proposal stating this area of Barton Street East is in need of viable businesses. The other two responses expressed concerns with the proposal, specifically related to the use of the property at 134 Birch Avenue, traffic flow along the alleyway, and safety concerns regarding the site functionality. These concerns are addressed as follows:

**Use of Property at 134 Birch Avenue**

A concern was noted that the property at 134 Birch Avenue may be utilized for uses other than parking, including a play area, social area for parties and promotions, smoking area, or any other use that could create noise levels that are different from the current residential use.

The proposal, as applied for by the owner, is to allow required parking on Block “2” for the day nursery on Block “1”. There is no residential use located at 134 Birch Avenue, as it is currently being used for a parking area. The sketch submitted with the application shows that the required play area will be accommodated on the Barton Street property, and staff notes that a commercial use is not permitted on the Birch Avenue property. In terms of restricting the use of the property for a smoking area or a social area, these are not issues that can be regulated under the Zoning By-law.

**Traffic Flow and Increased Volume**

There are concerns that the proposal will increase traffic flows along the alleyway that runs east-west from Birch Avenue to Gibson Avenue.
The design of the angled parking space layout forces traffic to enter the parking area off Birch Avenue and exist onto Gibson Avenue through the alleyway. Traffic Engineering and Operations staff has not identified any issues regarding traffic flow along the alleyway as a result of the proposal.

Potential Safety Concerns

One of the letters received identified a concern that the proposal will be a danger to the children who will inevitably run out into the alleyway, and local homeowners who use the alleyway will need to accommodate a significant amount of “hazardous” traffic. It was also noted that the public parking lot on the other side of Birch Avenue could be used because there is ample parking space and has a set of lights that regulates traffic. Staff notes that the play area is fenced off and the children will be supervised.

Other safety suggestions include installing an all-weather safety mirror on the southwest corner of the existing building so vehicles turning onto Birch can better see pedestrians and on-coming traffic, and that improved lighting be required to deter other unwanted activities from taking place at 134 Birch Avenue. The installation of a safety mirror and lighting will be further reviewed at the Site Plan Control stage.

ALTERNATIVES FOR CONSIDERATION:

If the application is denied, then the owner has the option of using Block “1” for the range of uses permitted in the “H” (Community Shopping and Commercial, etc.) District, and using Block “2” for the range of uses permitted in the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District.

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 Provincial Policy Statement (PPS) provides policy direction of provincial interest related to land use planning and development. The Planning Act requires that, in exercising any authority that affects planning matters, planning authorities shall be
consistent with policy statements issued under this Act. The application is consistent with Policy 1.1.3.1 of the Provincial Policy Statement, which focuses growth in settlement areas.

**Hamilton-Wentworth Official Plan**

The subject property is designated “Urban Area – High Density Mixed Use Corridor” in the Hamilton-Wentworth Official Plan. Policy C-3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans based on full municipal services, will be concentrated in Urban Areas. Policy C-3.1.1 states that a compact higher density urban form, with mixed use development in identified Regional and Municipal centres and along corridors, best meets the environmental, social and economic principles of economic development. As the nature of the application is for modifications to the existing zoning for lands within the Urban Area, where full municipal services are available, the proposal conforms to the policies of the Hamilton-Wentworth Official Plan.

**Hamilton Official Plan**

The subject property is designated “Commercial” in the Hamilton Official Plan. The following policies, among others, are applicable:

“A.2.2.1 The primary uses permitted in the areas exceeding 0.4 hectare designated on Schedule "A" as COMMERCIAL will be for Commerce. In this regard, Commerce is defined as establishments involved in the buying and selling of goods and services; business offices; and hotels, convention and entertainment facilities. In addition to the primary permitted uses, the following may be permitted within COMMERCIAL areas provided that they have been designated in the Neighbourhood Plan, where one exists: (O.P.A. 128)

ii) Institutional Uses, regardless of site area and, in accordance with the provisions of Subsection A.2.6 of this Plan. (O.P.A. No. 27)

**Extended Commercial**

A. 2.2.14 The EXTENDED COMMERCIAL category applies to existing stretches of individually managed Commercial establishments located along Arterial Roads, serving both pedestrian and automobile borne trade. It consists of:

i) "Ribbon" Commercial uses on smaller lots serving predominantly residents and pedestrians in the vicinity, with some specialized Commercial uses attracting automobile borne traffic from beyond the local area; and,

ii) Larger scaled "Highway" Commercial uses on deep lots, reliant on locations readily accessible to private vehicles specifically coming to, and parking on, the premises to do business.
A.2.2.23 Off-street parking and loading will be required within predominantly Highway Commercial areas, and will be provided by the developers or owners of Commercial development. Council may consider supplying municipal parking areas, if deemed to be required, where they will serve both EXTENDED COMMERCIAL development and other retail concentrations in close proximity to each other.

A.2.2.24 Council will encourage and, where feasible, assist in the provision of adequate off-street parking facilities in all other EXTENDED COMMERCIAL areas where existing parking problems are identified. Such parking facilities will be:

i) Readily accessible from the main thoroughfare serving the EXTENDED COMMERCIAL area, including via side-streets off the main thoroughfare; and,

ii) Preferably to the rear of the EXTENDED COMMERCIAL development where their use will not adversely impact the amenity of adjacent Residential areas, subject to the General Provisions herein.

General Provisions

A.2.2.37 In addition to the provisions of Subsection B.3.3 of this Plan, adequate parking and loading space will be required in clearly defined areas for all development and redevelopment within the COMMERCIAL designation and will include adequate space for owners, employees, customers and delivery vehicles. Council will require that, in all normal circumstances, a high standard of parking and loading facilities will be maintained in accordance with current practices. (O.P.A. No. 46)

A.2.2.39 No parking facility serving a COMMERCIAL USE or group of uses will be permitted beyond a COMMERCIAL designation, nor will vehicular access to said COMMERCIAL USES be permitted over Residentially designated lands. (O.P.A. No. 46)

A.2.2.40 Where possible, loading facilities and parking space for delivery vehicles will be located, buffered and screened, so as to minimize adverse impacts on adjacent Residential Uses. (O.P.A. No. 46)

Subsection A.2.6 – Major Institutional Uses

A.2.6.1 The primary uses permitted in the area exceeding 0.4 hectare in size designated on Schedule “A” as MAJOR INSTITUTIONAL, will consist of cultural facilities, health, welfare, educational, religious, and governmental activities and accessory uses.
However, such uses less than 0.4 hectare in site area will be permitted in areas designated Residential, provided they satisfy the requirements of Policy A.2.1.3. Further, notwithstanding the above site area requirements, MAJOR INSTITUTIONAL uses will also be permitted in areas designated Commercial as set out in Policy A.2.2.1 (O.P.A. No. 27).

A.2.6.7 Council will encourage the establishment of Day Nurseries in areas designated MAJOR INSTITUTIONAL where:

i) adequate on-site parking is available;
ii) a drop-off/pick-up area can be provided; and,
iii) noise and traffic problems are not created."

The proposal conforms to the policies of the Hamilton Official Plan since Institutional uses are permitted within areas designated “Commercial”, and adequate parking is being provided.

Neighbourhood Plan

The subject lands are designated “Commercial” within the approved Gibson Neighbourhood Plan. The proposal conforms to the Plan.

RELEVANT CONSULTATION:

The following Departments and Agencies had no comments or objections:

- Public Works Department – Forestry and Horticulture Section.
- Horizon Utilities Corporation.
- Hamilton-Wentworth District School Board.
- Bell Canada.

The Taxation Division, Corporate Services Department, has advised that there are outstanding property tax balances to the end of January 2008. In this regard, it would not be appropriate to forward the implementing By-law to City Council until the property taxes are brought into good standing.

The Traffic Engineering and Operations Section, Public Works Department, has advised that the alley running east-west between Birch Avenue and Gibson Avenue is City assumed, that 3.0 metre x 3.0 metre vision triangles are required at the alleyway access along Birch Avenue, and that there are redundant accesses located on Barton Street East and Birch Avenue that are to be removed. The owner has revised the concept plan to show the required vision triangles and, as a result, a reduction to the number of required parking spaces was included as one of the modifications to Zoning By-law No. 6593. The closure of any redundant accesses will be addressed through the Site Plan Control process.
Public Consultation

In accordance with the Council approved Public Participation Policy, the application was pre-circulated to 210 property owners within 120 metres of the subject lands. A Public Notice sign was also posted on the property on November 23, 2007, and Notice of a Public Meeting has been given in accordance with the requirements of the Planning Act.

To date, three letters have been received from neighbouring residents (see Appendix “G”). The issues raised in these letters are discussed under the Analysis/Rationale section of the report.

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
The public are involved in the definition and development of local solutions.

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

Economic Well-Being is enhanced. ☑ Yes □ No
Investment in Hamilton is enhanced and supported.

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

:JD
Attachs: (7)
Subject Property

- **Block 1 - 594 and 598 Barton Street East**
  Change in Zoning from "H" (Community Shopping and Commercial, etc.) District to "H/S-1585" (Community Shopping and Commercial, etc.) District, modified.

- **Block 2 - 134 Birch Avenue**
  Change in Zoning from "D" (Urban Protected Residential - One and Two Family Dwellings, etc.) District to "D/S-1685" (Urban Protected Residential - One and Two Family Dwellings, etc.) District, modified.
CITY OF HAMILTON

BY-LAW NO. __________

To Amend Zoning By-law No. 6593 (Hamilton),
Respecting the Properties Located at 594 & 598 Barton Street East and 134 Birch Avenue

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

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

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

AND WHEREAS the Council of The Corporation 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 Section of Report PED08061 of the Economic Development and Planning Committee, at its meeting held on the day of 2008, 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, approved by the Minister under the Planning Act on June 1, 1982;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Sheet No. E-21 of the District maps, appended to and forming part of By-law No. 6593 (Hamilton), is amended:

   (a) by changing the zoning from the “H” (Community Shopping and Commercial, etc.) District to the “H/S-1585” (Community Shopping and Commercial, etc.) District, Modified; the lands comprised of Block “1”;
(b) by changing the zoning from the “D” (Urban Protected Residential – 1 & 2 Family Dwellings, etc.) District to the “D/S-1 585” (Urban Protected Residential – 1 & 2 Family Dwellings, etc.) District, Modified; the lands comprised of Block “2”;

the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”.

2. That the “H” (Community Shopping and Commercial, etc.) District provisions, as contained in Section 14 of Zoning By-law No. 6593, applicable to Block “1”, be modified to include the following special requirements:

(a) that Subsection 14(3)(iii)(c) of Zoning By-law No. 6593, shall not apply to the building existing on the date of the passing of this By-law, being the _______ day of ________, 2008;

(b) that notwithstanding Subsection 18A(1)(a) of Zoning By-law No. 6593, a minimum of eight required parking spaces shall be provided and maintained for a day nursery accommodating a maximum of 54 children;

(c) that notwithstanding Subsection 18A(1) and Subsection 18A(9) of Zoning By-law No. 6593, a maximum of seven required parking spaces may be provided and maintained on Block “2”;

(d) that notwithstanding Subsection 18A(7) of Zoning By-law No. 6593, every parking space shall have a minimum length of 5.5 metres; and,

(e) that notwithstanding Subsections 18A(21)(a), (b), and (c) of Zoning By-law No. 6593, access to parking space(s) shall be permitted from the City assumed alleyway.

3. That the “D” (Urban Protected Residential – 1 & 2 Family Dwellings, etc.) District provisions, as contained in Section 10 of Zoning By-law No. 6593, applicable to Block “2”, be modified to include the following special requirements:

(a) that notwithstanding Subsection 10(1) of Zoning By-law No. 6593, only parking used in conjunction with Block “1” shall be permitted;

(b) that Subsection 18(A)(1)(f) of Zoning By-law No. 6593, shall not apply;

(c) that notwithstanding Subsection 18A(7) of Zoning By-law No. 6593, every parking space shall be a minimum of 2.6 metres wide x 5.5 metres long;

(d) that notwithstanding Subsection 18A(9) and Subsection 18A(10) of Zoning By-law No. 6593, manoeuvring space may be permitted within the City assumed alleyway;
(e) that notwithstanding Subsection 18A(11)(a) of Zoning By-law No. 6593, the boundary of the parking area shall be located not less than 1.4 metres from the adjoining residential district;

(f) that notwithstanding Subsection 18A(12)(a) and Subsection 13C(4)(ii) of Zoning By-law No. 6593, a planting strip having a minimum width of 1.4 metres shall be provided and maintained along the southerly side lot line;

(g) that notwithstanding Subsection 18A(14g) of Zoning By-law No. 6593, one parking space shall be permitted within the required front yard; and,

(h) that notwithstanding Subsections 18A(21)(a), (b), and (c) of Zoning By-law No. 6593, access to the parking spaces shall be permitted from the City assumed alleyway.

4. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the “H” (Community Shopping and Commercial, etc.) District and “D” (Urban Protected Residential – 1 & 2 Family Dwellings, etc.) District provisions, subject to the special requirements in Section 2 and Section 3 of this By-law.

5. That Zoning By-law No. 6593 (City of Hamilton) is amended by adding this By-law to Section 19B as Schedule S-1585.

6. 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 , 2008.

FRED EISENBERGER
MAYOR

KEVIN C. CHRISTENSON
CLERK

ZAR-07-073
Schedule "A"

Map Forming Part of By-Law No. 08-____
to Amend By-law No. 6593

Subject Property

- Block 1 - 594 and 598 Barton Street East
  Change in Zoning from "H" (Community Shopping and Commercial, etc.) District to "H/S-1885" (Community Shopping and Commercial, etc.) District, modified.

- Block 2 - 134 Birch Avenue
  Change in Zoning from "D" (Urban Protected Residential - One and Two Family Dwellings, etc.) District to "D/S-1585" (Urban Protected Residential - One and Two Family Dwellings, etc.) District, modified.

This is Schedule "A" to By-Law No. 08-
Passed the .......... day of ............... , 2008

Clark
Mayor
EXHIBIT "A"
EXHIBIT "B"

COMMITTEE OF ADJUSTMENT

NOTICE OF PUBLIC HEARING

APPLICATION FOR MINOR VARIANCE

APPLICATION NO. HM/A-06:250

IN THE MATTER OF The Planning Act, 1990 and of the Zoning By-Law No. 6593, of the City of Hamilton, Section 14.

AND IN THE MATTER OF the Premises known as Municipal number 594 Barton Street East, in the City of Hamilton and in an "H" (Community Shopping and Commercial) district;

AND IN THE MATTER OF AN APPLICATION by the owner 698765 Ontario Inc. (Gary Zebroski), for relief from the provisions of the Zoning By-Law No. 6593, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit a proposed Day Nursery (to be located on the ground floor) for the accommodation of 55 children notwithstanding that:

1) Zero parking spaces shall be provided on site instead of the minimum required ten (10) parking spaces.

Please Note: The proposed eleven (11) parking spaces are not permitted as they are located in a residential zoning district and off site.

TAKE NOTICE that this application will be heard by the Committee as shown below:

DATE: Wednesday, October 4th, 2006
TIME: 3:40 p.m.
PLACE: Room 219
Hamilton City Hall

If there is any further information you may require on this application please contact this office, at (905) 546-2424, ext. 3935 or 4221.

By order of the Committee of Adjustment,


Carol Connor,
Secretary-Treasurer

Note: If you wish to be notified of the decision of the Committee in respect of this application, you must submit a written request to the Committee of Adjustment. This will also entitle you to be advised of a possible Ontario Municipal Board hearing. Even if you are the successful party, you should request a copy of the decision since the Committee's decision may be appealed to the Ontario Municipal Board by the applicant or another member of the public.

Note to Applicant: In default of appearance of yourself or of any person duly authorized by you to appear on your behalf, the Committee may dismiss the application for lack of prosecution.
Committee of Adjustment  
Hamilton City Centre  
6th floor, Suite 400, 77 James St. N.  
Hamilton, ON L8R 2K3  
Telephone (905) 546-2434, ext. 4321  
Fax (905) 546-6202

COMMITEE OF ADJUSTMENT  
DECISION OF THE COMMITTEE  

APPLICATION NO. HM/A-06:250  
SUBMISSION NO. A-250/07

IN THE MATTER OF The Planning Act, 1990 and of the Zoning By-Law No. 6593, of the City of Hamilton, Sections 14 and 18A.

AND IN THE MATTER OF the Premises known as Municipal number 594 Barton Street East, in the City of Hamilton and in a "H" (Community Shopping and Commercial) district;

AND IN THE MATTER OF AN APPLICATION, as amended, by the agent Gary Zebroski on behalf of the owner 698765 Ontario Inc., for relief from the provisions of the Zoning By-Law No. 6593, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit a day nursery for a maximum of thirty-six (36) children on the ground floor of the existing building notwithstanding that:

1) Two (2) of the six (6) required parking spaces shall be provided on the north side of the property having a minimum parking size of 5.5m x 2.7m instead of the minimum 6.0m x 2.7m parking space size required;

2) No landscaped strip shall be provided along the Barton street lot line instead of the minimum 1.0m width and average 2.0m width landscaped strip required;

3) No landscaped strip shall be provided along the easterly lot line abutting the residential use instead of the minimum 1.5m wide landscaping strip required; and,

4) Access to the four (4) parking spaces located on the south side of the property shall be provided by means of an alley way instead of by means of a right of way.

Note: This application includes two properties however the variance pertains to the Barton Street property only.

THE DECISION OF THE COMMITTEE IS:

That the said application IS 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 45 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 neighbouring lands.

DATED AT HAMILTON this 17th day of January, 2008

M. Dudzic (Chairman)  
D. Smith  
L. Gaddye  
C. Lewis

M. Switzer  
D. Serwatuk  
V. Abraham  
L. Tew

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS February 6th, 2008.

NOTE: This decision is not final and binding unless otherwise noted.
d'Andrade, Jennifer

From: Carolyn McCann
Sent: Friday, November 16, 2007 10:57 AM
To: d'Andrade, Jennifer
Subject: Comments re File No: ZAAR-07-073

I fully support this Zoning Amendment Application (File No: ZAAR-07-073). Barton St and this area needs viable businesses such as this one and a day-care facility is a wonderful addition. If more parking is needed, it should be allowed.

CAROLYN MCCANN
resident of
105 Chestnut Ave
Hamilton L8L 6K8

1/17/2008
From: mark richardson  
Sent: Thursday, November 22, 2007 8:29 PM  
To: d'Andrade, Jennifer  
Subject: Zoning Amendment Application (File # ZAR-07-073)

Dear Ms. d'Andrade,

Regarding the Zoning By-Law Amendment by 698765 Ontario Inc. for lands located at 594 and 598 Barton St. East and 134 Birch Ave. I have a few concerns. I reside at 163 Gibson Ave and I work 12 hour shifts at a manufacturing facility in Hamilton therefore I have to frequently sleep during the day while the day care facility will be/is operating. Before I can support converting 134 Birch Ave. to parking for the day care I must have absolute assurances from both The City of Hamilton and 698765 Ontario Inc. that the converted property will ONLY ever be used for parking and nothing else. My bedroom backs on to the alley and I am in close proximity to the property in question. I am concerned that the land on 134 Birch Ave. will also be used as a play area, Bar-B-Q area for parties or promotion, be used as a smoking area for the staff or any such use other than strictly parking that will create noise levels that are different from the current residential use. I will strongly oppose any change in zoning that will negatively affect my well being and ability to enjoy the use of my property.

My other concern is that the flow of traffic between Gibson Ave. and Birch Ave. be unaffected by the change in zoning. I park in my backyard using the City of Hamilton assumed alley that runs between Gibson Ave. and Birch Ave as access. I will strongly oppose any changes that will not allow me to drive straight through the Right of Way on the South side of 594/598 Barton St. East. Before I can support converting 134 Birch Ave. to parking for the day care I must have absolute assurances from both The City of Hamilton and 698765 Ontario Inc. that the Right of Way between Gibson Ave. and Birch Ave. on the South side of 594/598 Barton St. East will be UNCHANGED from its layout and status of today.

Regarding the Right of Way, I would like to please make a suggestion to Ontario 698765 Inc. that it may be a good idea to install an all-weather safety mirror on the South-West corner of the building so vehicles turning onto Birch Ave. can better see pedestrians and on-coming traffic. I am also concerned about a new parking lot being used as a rest area by prostitutes to service clients in their cars, improved lighting will be required. Prostitution is a severe problem in the Gibson neighborhood, please contact Councillor Bernie Morelli and the Hamilton police for details. So far I have found Ontario 698765 to be a good neighbor and I wish them much success. The leveling of 134 Birch Ave. could prove to be an improvement to the Gibson neighborhood as it is a "known" address to both the Property Standards Department and the Police department. Ultimately I can support the zoning amendment if and only if all of my listed concerns are addressed to my satisfaction.

Regards,

Mark Richardson  
163 Gibson Ave.  
Hamilton, ON  
L8L 6J9

1/17/2008
November 26, 2007

Mr. Peter J. De Iullo
Senior Project Manager
Ms. Jennifer d’Andrade
City of Hamilton
Planning and Economic Dev. Dept.
Planning Div. – Dev. Plan. – East Sec.
77 James Street North, Suite 400
Hamilton, ON L8R 2K3

RE: File No. ZAR-07-073

Dear Mr. De Iullo and Ms. D’Andraje:

Thank you for the opportunity to write in comments with respect to the File No. quoted above (zoning by-law amendment application).

As owner of the home at 604 Barton St. E., I object to the lot 134 Birch Avenue being zoned to allow parking for 594/598 Barton St. E. My reasons include

1) the increased vehicular traffic coming through the back laneway (Birch Ave. is a one-way street and so everyone will be obliged to come in from Gibson Ave. and drive through). This is a small back lane access used by those whose backyards and parking spaces open out onto the lane and significant additional traffic will clog up the laneway. Similarly, using G-3/S-15 off Gibson Ave. for parking will also increase traffic through this lane.

2) it will be a danger to the children who will inevitably run out into the lane. The local homeowners who use this lane during the times children are brought into and out of the day nursery will need to accommodate what appears to become a significant amount of "hazardous" traffic.

Besides which, there is a large public parking lot (noted as G-3 in the encl. Location Map) on the other side of Birch Ave. Though it is across the street, there is a set of lights there regulating traffic and there is ample parking space.

Thank you for allowing me to express the above. Please let me know the outcomes in due course.

Yours truly,

Paul Petricca

604 Barton St E.
Hamilton, ON L8L 2Z7