

ISSUE DATE:

NOV. 25, 2010



PL090538

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:/Applicant: Paletta International Corporation
Subject: Minor Variance
Variance from By-law No.: 6593 (Hamilton)
Property Address/Description: 227 Stone Church Road East
Municipality: City of Hamilton
Municipal File No.: HM/A-09:114
OMB Case No.: PL090538
OMB File No.: PL090538

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: Paletta International Corporation
Subject: Consent
Property Location: 227 Stone Church Road East
Municipality: City of Hamilton
Municipal Number: HM/B-06/182 and HM/B-06/183
OMB Case Number: PL090538
OMB File Number: PL100539, PL100541

APPEARANCES:

Parties

Counsel

Paletta International Corporation

S. Snider

City of Hamilton

J. Wice

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN
ON NOVEMBER 23, 2010 AND ORDER OF THE BOARD**

The appeals before me are resolved. Paletta International Corporation (Paletta) appealed decisions made by the Committee of Adjustment (Committee) of the City of Hamilton (City), denying two (2) provisional consents and refusing to authorize associated variances.

The hearing was conducted by way of telephone conference call. Mr. Thompson, a qualified land use planner, filed an Affidavit in advance of the hearing setting out the background, nature of the project and his planning opinion in respect of the consents

and the minor variances. In short, Paletta intends to create four residential building lots at 227 Stone Church Road East, Hamilton. There had been outstanding issues with the City on access, but these are resolved. The application is in accordance with all provincial and municipal plans and the requirements of 51(24) of the *Planning Act* are satisfied. The variances meet the four tests set out in the *Planning Act* and collectively and individually meet the general intent of the Official Plan and zoning by-law, are desirable and minor in impact.

Based on the evidence of Mr. Thompson, the appeals are allowed. The variances as described by the Committee (Attachment "1") are authorized. Provisional consents shall be given in accordance with Attachment "2", and subject to the agreed upon conditions (Attachment "3").

This is the Order of the Board.

"J. de P. Seaborn"

J. de P. SEABORN
VICE-CHAIR

ATTACHMENT "1"
Exhibit "C"

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Committee of Adjustment
Hamilton City Centre
4th floor, Suite 400, 77 James St. N.
Hamilton, ON L8R 2S3
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT
DECISION OF THE COMMITTEE

APPLICATION NO. HM/A-09:114
SUBMISSION NO. A-114/09

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13 as amended and of the Zoning By-Law No. 6593, of the City of Hamilton, Section 9.

AND IN THE MATTER OF the Premises known as Municipal number 227 Stone Church Road East, in the City of Hamilton and in a "C" (Urban Protected Residential) district.

AND IN THE MATTER OF AN APPLICATION by the agent Dave Pibbado on behalf of the owner Paletta International Corporation, 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 the creation of four (4) residential building lots notwithstanding that:

- 1) A minimum side yard width of 0.6m shall be provided on one side instead of the minimum required side yard width of 1.2m on both sides;
- 2) Lot widths of 10.1m shall be provided instead of the minimum required lot width of 12.0m; and,
- 3) Lot areas of 336m² shall be provided instead of the minimum required lot area of 360.0m².

Note:

- 1) Unable to determine the proposed lot width for Part 2 being the lot at the corner of the intersection of Upper Wellington and Stone Church Road East. The width of a lot shall mean the horizontal distance between the side lot lines measured at a depth of 0.0m from and parallel to the front lot line. Insufficient information provided to determine, additional variance will be required.
- 2) Applicant requested a side yard reduction from 6.0m to 3.0m for Part 2 being the lot at the corner of the intersection of Upper Wellington and Stone Church Road East. The by-law requires a minimum side yard of 1.2m, therefore no variance is required in this regard.

This application is necessary to facilitate Consent Applications HMB-06:182 and HMB-06:183.

THE DECISION OF THE COMMITTEE IS:

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

1. The Committee having regard to the evidence is of the opinion that the relief requested is beyond that of a minor nature.
2. The relief granted is undesirable for the appropriate development of the land and building and is 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 intensity of use of the subject parcel of land is of the opinion that such development would not be appropriate for the lands.

DATED AT HAMILTON this 21st day of May, 2009

M. Dudaic (Chairman)

M. Switzer

D. Drury

C. Lewis

D. Storzuk

V. Abramson

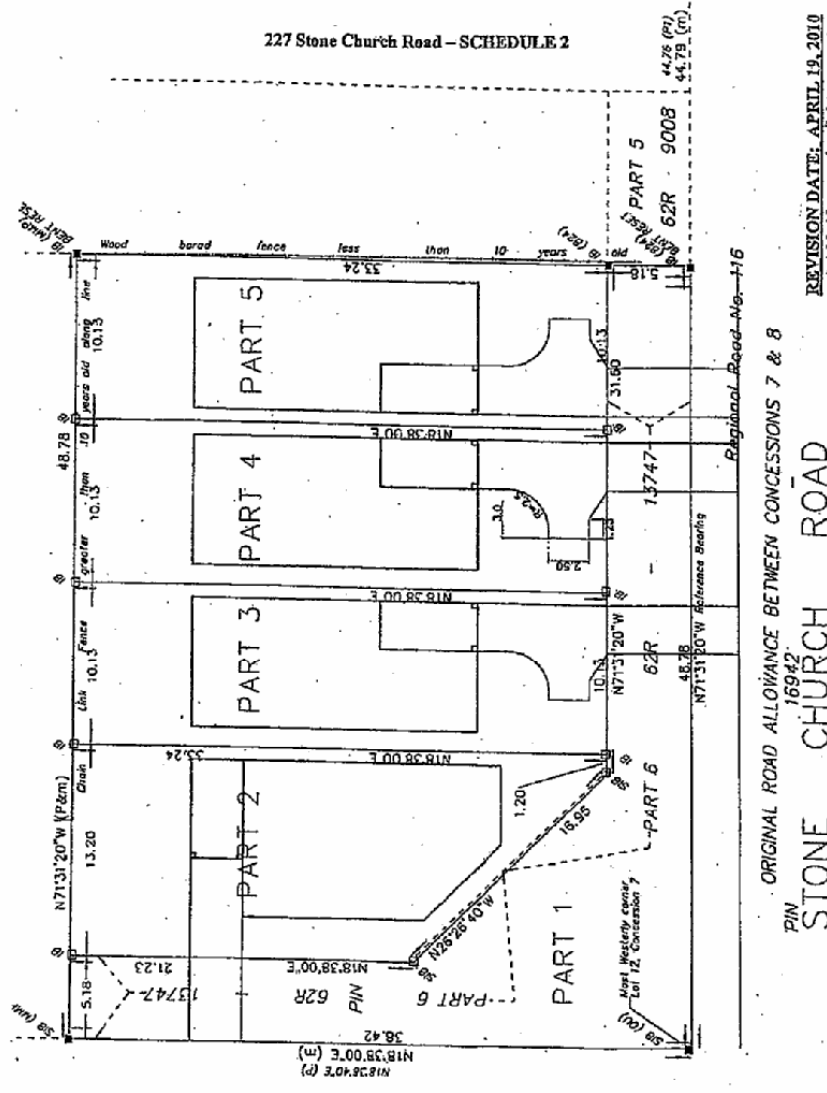
L. Tew

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS June 10th, 2009.

NOTE: This decision is not final and binding unless otherwise noted.

ATTACHMENT "2"
Exhibit "B"

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This is Exhibit "B" referred to in the
 affidavit of JASON THOMPSON
 sworn before me, this 10th
 day of NOVEMBER, 2010

Lynn Sweeney
 A COMMISSIONER FOR TAKING AFFIDAVITS

Lynn Ann Sweeney, a Commissioner, etc.,
 City of Hamilton, for the City of Hamilton.
 Expires May 24, 2012.

ATTACHMENT "3"

PL090538

Exhibit "E"

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Should the Board approve the necessary variances and severances the following conditions and notes should apply:

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. That the owner/applicant 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. That the owner shall carry out an archaeological assessment of the entire property and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances shall take place on the subject property prior to the approval of the Director of Planning and the Ministry of Culture confirming that all archaeological resource concerns have met licensing and conservation requirements. 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).

4. The owner receive final approval of minor variance application HMA-09:114.
5. That the owner enters into, and registers on title of the lands, a Consent Agreement with the City of Hamilton to deal with the grading and drainage on subject lands to the satisfaction of the Manager of Development Engineering.
6. That the owner dedicate to the City of Hamilton by deed, sufficient lands from the severed and retained portion of subject lands to establish west and south property line 50 feet away of the existing centrelines of Upper Wellington Street and Stone Church Road East.
7. That the owner dedicate to the City of Hamilton by deed, a 12.0m x 12.0m visibility triangle at the intersection of Stone Church Road East and Upper Wellington Street from the widened limits to the satisfaction of the Manager of Development Engineering.
8. That the owner makes a cash payment to the City of Hamilton for the future urbanization of Upper Wellington Street and the relocation of the existing sidewalk on Stone Church Road East based on the current New Roads Servicing Rate.
9. The owner shall pay outstanding realty taxes and/or all other charges owing to the City Treasurer.

Exhibit "E"

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10. That the owner submit to the Committee of Adjustment office an administration fee of \$15.00 payable to the City of Hamilton to cover the costs of setting up new tax accounts for the newly created lots.

NOTE (TO BE INCLUDED IN DECISION IF APPROVED):

Based on this application being approved and all conditions being met, the owner/applicant should be made aware that the following municipal addresses will be assigned. Part 2 – 223 Stone Church Road East, Part 3 – 227 Stone Church Road East, Part 4 – 231 Stone Church Road East, Part 5 – 235 Stone Church Road East.