

ISSUE DATE:

Jul. 06, 2011



PL101389

Ontario
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

Applicant and Appellant: Dianne Avery
Subject: Minor Variance
Variance from By-law No.: No. 6593
Property Address/Description: 99 Burris Street
Municipality: City of Hamilton
Municipal File No.: A-249/10
OMB Case No.: PL101389
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APPEARANCES:

Parties

City of Hamilton ("City")

Dianne Avery

Counsel

Robert Doumani and Andrea Skinner

Manfred Rudolph

**MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN STEFANKO
ON JUNE 15, 2011 AND ORDER OF THE BOARD**

[1] On this motion brought by the City for, inter alia, additional information from Ms. Avery, I was advised that such information has now been received.

[2] The hearing in this matter is scheduled for 3 days beginning September 27, 2011 at 10:30 a.m. The hearing will be at McMaster Learning Centre, OMB Hearing Room, 50 Main Street East, Hamilton.

[3] At the hearing, the threshold issue of whether Ms. Avery's business at 99 Burris is that of a foster home or a residential care facility shall be determined in the first instance prior to any other issues. If it is determined that such business is that of a foster home, the balance of the hearing shall focus on the variance relief sought and the provisions of s.45(1) of the *Planning Act* ("Act"). In the event it is determined that the

business conducted by Ms. Avery is a retirement care facility, the City will not oppose Ms. Avery amending the variance relief she may require in that regard pursuant to s.45(18.1) of the Act and to the extent applicable, s.45(18.1.1). The hearing shall then focus on the amended variances and s.45(1).

[4] In view of the fact that Ms. Avery has just recently retained counsel (and who, by the way, is providing his services on a pro bono basis) I do not believe that costs should be awarded in relation to this motion.

[5] No further notice shall be required and I am not seized.

[6] This is the Order of the Board.

“Steven Stefanko”

STEVEN STEFANKO
VICE-CHAIR