Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

ISSUE DATE: December 22, 2016 **CASE NO(S).:** PL160536

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Demetrios Tselepakis
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	189 Locke Street North
Municipality:	City of Hamilton
Municipal File No.:	A-61/16
OMB Case No.:	PL160536
OMB File No.:	PL160536
OMB Case Name:	Tselepakis v. Hamilton (City)

Board Rule 107 states:

> **107. Effective Date of Board Decision** A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: November 17, 2016 in Dundas, Ontario and November 25, 2016 by telephone conference call

APPEARANCES:

Parties	**Counsel**
Demetrios Tselepakis	Self-represented
City of Hamilton	Patrick McDonald

MEMORANDUM OF ORAL DECISION DELIVERED BY ANNE MILCHBERG ON NOVEMBER 25, 2016 AND ORDER OF THE BOARD

[1] This hearing concerns an appeal by Demetrios Tselepakis ("Appellant") from a decision of the City of Hamilton ("City") Committee of Adjustment's ("CoA") which refused an application for minor variances in connection with a property located at 189 Locke Street North (the "subject property"). This is one of two unconsolidated appeals heard before the Board at the same time; the other application is for 187 Locke Street North ("No. 187"). Mr. Tselepakis is the Applicant and the Appellant for both appeals. No. 187 is the subject of a separate, similar decision (under PL160535). There are very minor technical differences between the requested variances and associated conditions with respect to the appeals.

[2] Matt Johnson, a qualified expert land use planner, appeared on behalf of the Appellant to provide planning evidence in support of the proposed settlement for PL160535.

[3] Aside from the Parties and a planning witness, no other unrelated, interested individuals attended the hearing.

[4] The subject property is located in the West Harbour residential neighbourhood of Hamilton, an area gradually undergoing redevelopment, where there is a mixed bag of built forms and non-compliant building setbacks. The lot area for the property is 236 square metres ("m^2") with a frontage of 7.62 metres ("m") and a depth of 31 m.

[5] There is a partially constructed new dwelling on the subject property (as well as at No. 187). The City had issued a building permit for a 2 ½ storey dwelling in February 2016, and the original design complied fully with the City's Zoning By-law ("ZBL"). During construction, the upper ½ storey of the dwelling was converted to a full storey without permits. A stop work order was issued by the City, and the Appellant then applied to the CoA for variances to legalize the uppermost storey on the dwelling at 187 Locke Street North and other identified deviations from the ZBL. He also applied for similar (but not numerically identical) variances for No. 189.

[6] In the case of the subject property, the variances originally requested in the appeal were as follows:

1. A maximum building height of four (4) storeys shall be provided instead of the maximum permitted three (3) storeys; (“the height variance”)

2. A minimum northerly side yard of 0.7m and a minimum southerly side yard of 1.0 m shall be provided instead of the minimum required side yard of 2.7m;

3. Eaves and gutters may be permitted to project 0.5m into the required side yards so that they may be as close as 0.2m to the side lot lines instead of the maximum permitted projection of not more than one-half of the 0.7m side yard width (being 0.35m);

4. A minimum parking space width of 2.6m shall be provided for the parking space within the attached garage instead of the minimum required parking space width of 2.7m; and,

5. A minimum landscaped area of 33% shall be provided in the front yard instead of the requirement that not less than 50% of the gross area of the front yard shall be used for a landscaped area excluding concrete, asphalt, gravel, pavers, or other similar materials. [Exhibit 1, Tab 8]

[7] On November 17, 2016, the scheduled day of the hearing, the Board was advised by the Parties that they have resolved the appeal for the subject property insofar as the City’s Planning Committee had adopted a settlement proposal on November 15, 2016 [referred to in Exhibit 3]. However, as of November 17, 2016, City Council had not yet considered the matter—it was on the Council agenda for November 23, 2016.

[8] To deal with the matter as efficiently as possible, and with the consent of the Parties, the Board elected to hear evidence on the terms of settlement and planning

merits on November 17, 2016 during the hearing, and to continue the hearing by teleconference on November 25, 2016 for an update on the status of Council's consideration. From the Board's perspective, this would not be a settlement among parties until the City had officially agreed to it. The Board has regard for the decisions of City Council.

[9] At the hearing continuation by teleconference of November 25, 2016, Council minutes of November 23, 2016 were entered into evidence [Exhibit 4, p. 7-8]. These minutes reflect the proposed resolution of the matter. Counsel for the City also submitted a Draft Board Order [Exhibit 5] containing the proposed terms of settlement and a Schedule A comprised of three drawings. These drawings include the front and side façade of the dwelling, a dimensioned site plan and a ground floor plan.

[10] The list of variances that appear in the settlement adopted by Council differ from the variances that were considered by the CoA in the following ways:

- There is a reduction from 5 to 4 variances. There is no longer a need for height variance, as the City's Building Division determined that the proposed dwelling is three storeys in height, not four. [Exhibit 1, Tab 16]. Earlier, the basement of the dwelling had been counted as a storey, but no longer, based on new grading information received.

- The minimum landscaped area to be provided is now 40% of the gross area of the front yard, not the 33% originally proposed.

[11] As the amendments to the original application were very minor in the Board's estimation, the Board required no further notice of the application, as amended.

[12] In the settlement approved by Council, three variances—for minimum side yard, eaves and gutters projection, and minimum parking space width—would remain unchanged.

[13] A number of conditions were formulated by the Parties for inclusion in the Board order. The purpose of these conditions is to ensure visual and built form compatibility of the new dwelling in the neighbourhood. Among the conditions:

- Certain construction materials in specific colours are to be used on the front entry portico, on the front and side façade of the third storey dormers, and on the north façade.

- a horizontal fascia in a specific colour is to be maintained along the edge of the second and third storeys as depicted in Exhibit 5, Schedule A, page 1 of 3.

[14] Mr. Johnson, called by the Appellant, provided oral and written evidence on the relevant excerpts from the Provincial Policy Statement, 2014 (“PPS”), the Urban Hamilton Official Plan (“UHOP”), West Harbour Setting Sail Secondary Plan (“Secondary Plan”) and ZBL with respect to the proposed development. It was Mr. Johnson’s uncontroverted professional planning opinion that the requested settlement variances and the conditions formulated by Council:

- conform to the (“PPS”), as the resulting development would facilitate the intensification of a settlement area;

- are consistent with the policies of the City’s Official Plan, UHOP. The UHOP permits three storey dwellings, encourages intensification and sets out Urban Design policies that this dwelling meets, in Mr. Johnson’s opinion;

- are consistent with the City’s Secondary Plan, particularly with respect to its compatibility and design sections;

- meet the intent and purpose the ZBL. Mr. Johnson noted that there was no planning concern with the proposed eaves and gutter projections, or

with the shortfall in the width of the parking space in the garage, which had a small pinch-point due to a stair structure. The proposed side yard setbacks were considered to be consistent with many of the non-compliant setbacks already evident in the neighbourhood. As for the front yard landscaping, the proposed reduction from 50% to 40% coverage was considered to be acceptable because it was planned to be predominantly soft (i.e. green) landscaping; and

- are minor in nature, without any identifiable adverse impacts arising.

[15] Mr. Johnson also testified that the proposed development is appropriate and constitutes good planning.

CONCLUSIONS AND ORDER

[16] The Board accepts the uncontroverted expert planning opinion evidence of Mr. Johnson, and finds that the proposed variances as amended, individually and collectively, meet the four tests of the Act, when combined with the conditions requested by Hamilton City Council.

[17] Accordingly, the decision and order of the Board is to allow the appeal in part and the variances are authorized, subject to conditions, all of which is set out below:

(a) the following variances to the City of Hamilton Zoning By-law No. 6593 are authorized for the subject property, subject to construction in accordance with the plans attached hereto as Schedule A (“Schedule A”):

1. A minimum northerly side yard of 0.7 m and a minimum southerly side yard of 1.0 m shall be provided instead of the minimum required side yard of 2.7 m, subject to construction in accordance with the grading plan referred to in paragraph (b) below;

2. Eaves and gutters may be permitted to project 0.5 m into the required side yards so that they may be close as 0.2 m to the side lot lines instead of the maximum permitted projection of not more than one-half of the 0.7 m side yard width (being 0.35 m), subject to construction in accordance with the grading plan referred to in paragraph (b) below;

3. A minimum parking space width of 2.5 m shall be provided for the parking space within the attached garages instead of the minimum required parking space width of 2.7 m, subject to construction in accordance with Schedule A; and

4. A minimum landscaped area of not less than 40% shall be provided in the front yards instead of the requirement that not less than 50% of the gross area of the front yard shall be used for a landscaped area excluding concrete, asphalt, gravel, pavers, or other similar materials, subject to construction in accordance with Schedule A.

(b) The previously requested variance that a maximum of four (4) storeys shall be permitted notwithstanding that a maximum of three (3) storeys are permitted, is withdrawn, subject to the City's conclusion that the building located on the subject property is in fact three (3) storeys. This conclusion is based on a grading plan dated June 27, 2016, as previously provided by the Applicant to the City and as accepted and approved by Staff, and provided that all construction and grading on the subject property shall be in accordance with this aforementioned plan.

(c) the above variances are allowed subject to the exterior construction of the building located on the subject property to be constructed and maintained as follows:

1. All work shall be done in accordance with the revised grading plan previously provided by the Applicant and approved by City staff.

2. The exterior construction materials shall be as follows:

(1) The front entry portico shall be covered in grey vinyl cedar shake, or its equivalent.

(2) The front and side façade of the third storey dormers shall be clad in vertical board and batten, coloured “Pebble” as indicated on a colour board previously provided to and accepted by City staff.

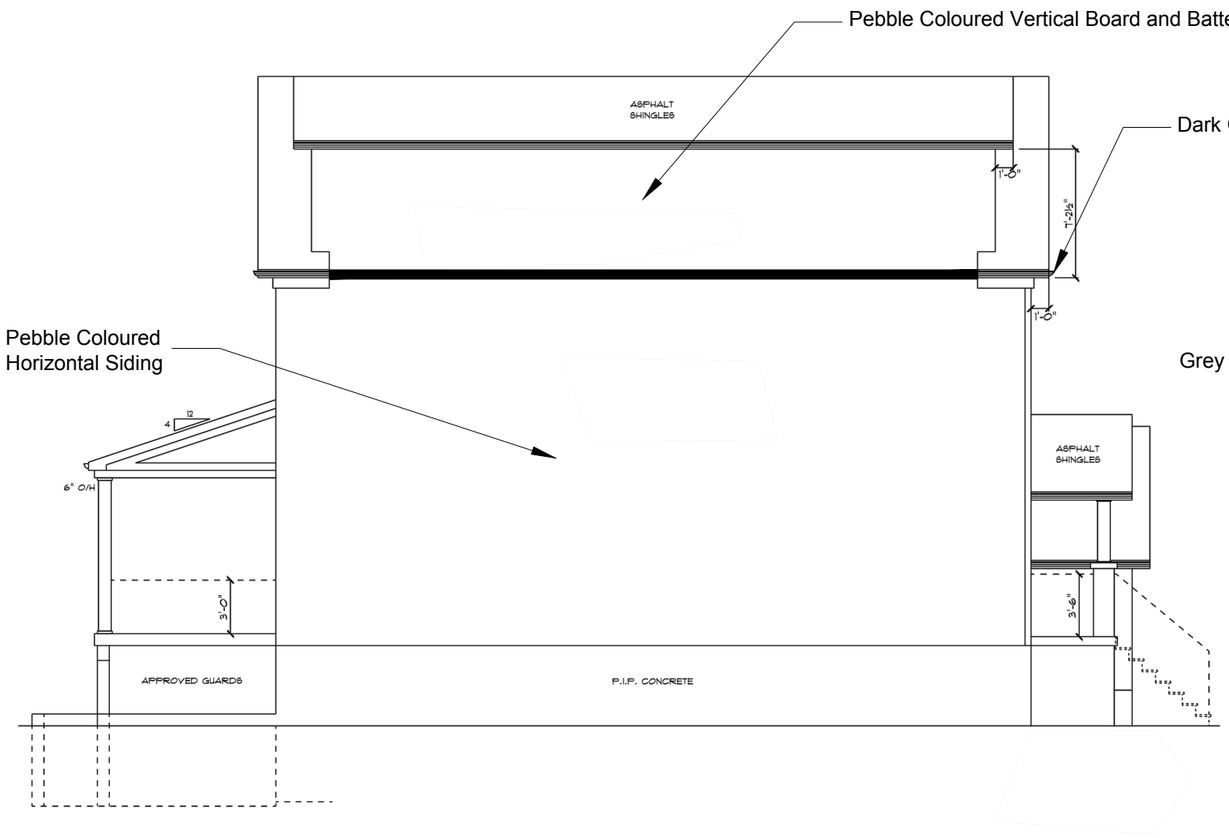
(3) The north façade of the building located on the subject property shall be clad in horizontal siding below the third storey dormer in the colour “Pebble” as indicated on a colour board previously provided to City staff.

(4) A horizontal fascia, in a dark grey or black colour, shall be installed and maintained along the edge of the second and third storeys, delineating the dormers above.

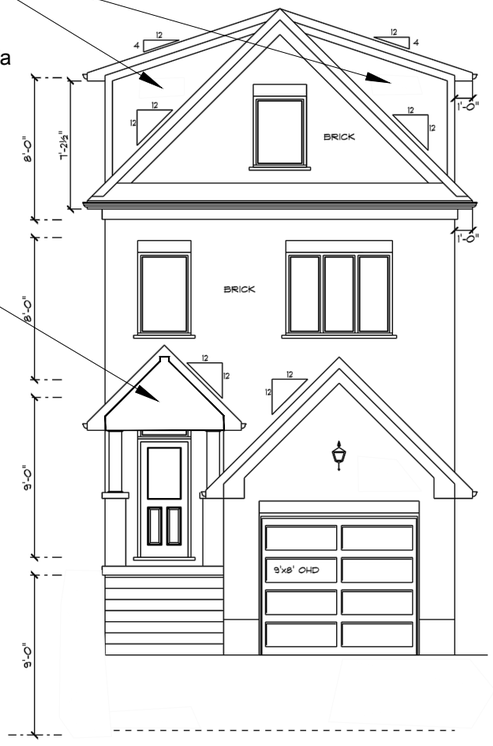
“Anne Milchberg”

ANNE MILCHBERG
MEMBER

SCHEDULE A



South Facade of 187 Locke Street North & North Facade of 189 Locke Street North



Front Facade of 187 & 189 Locke Street North

Schedule "A" page 1 of 3

DESIGN BY: S. McKAY	CHECKED BY: M. JOHNSTON
DRAWN BY: S. McKAY	DATE: NOVEMBER 2016

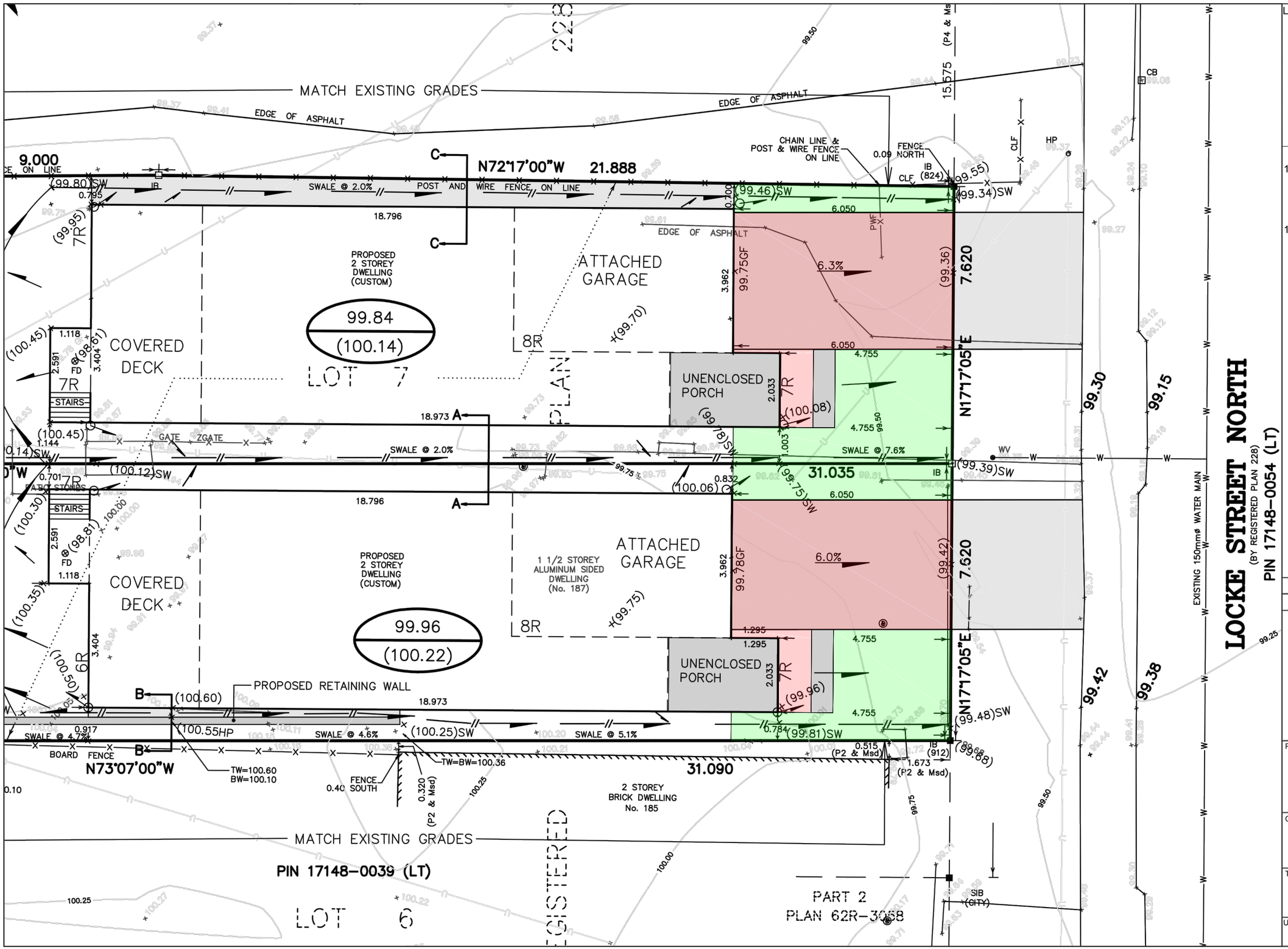
UrbanSolutions
Planning & Land Development Consultants Inc.
105 MAIN STREET EAST, SUITE 501
HAMILTON, ON L8N 1G6
905-546-1087 - urbansolutions.info

PROJECT:
187 &189 LOCKE STREET NORTH
CITY OF HAMILTON

CLIENT:
Demetrios Tselepakis

TITLE:
Proposed Facade

U/S FILE NUMBER:	SHEET NUMBER:
142-16	1



LEGEND:

- Landscaped Area included in Gross Front Yard Area
- Non Landscaped Area included in Gross Front Yard Area
- Non Landscaped Area not included in Gross Front Yard Area (unenclosed porch and walkway)

187 Locke Street North:

Gross Front Yard Area = 42.10 m²
Landscaped Area = 18.19 m² (43.2%)

189 Locke Street North:

Gross Front Yard Area = 42.41 m²
Landscape Area = 17.59 m² (41.5%)

DESIGN BY: S. McKAY	CHECKED BY: M. JOHNSTON
DRAWN BY: S. McKAY	DATE: November 9, 2016

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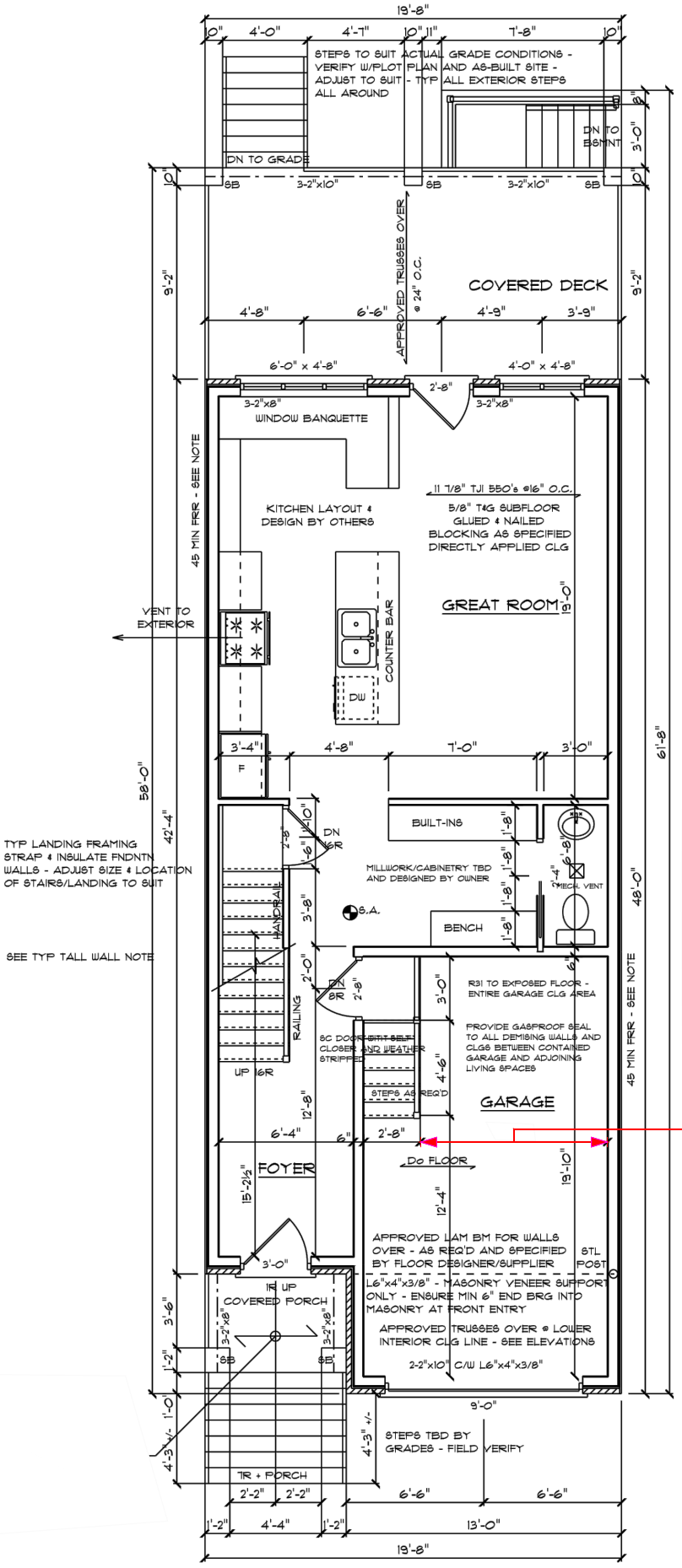
PROJECT:
187 &189 LOCKE STREET NORTH
CITY OF HAMILTON

CLIENT:
Demetrios Tselepakis

TITLE:
FRONT YARD LANDSCAPING SKETCH

U/S FILE NUMBER:	SHEET NUMBER:
142-16	1



187 & 189 Locke St. N.