

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: July 31, 2019

CASE NO(S): PL190033

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	1210800 Ontario Limited et. al.
Applicant:	Mahindra Roopnarine and Vincent Villanis
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	13 Magill Street
Municipality:	City of Hamilton
Municipal File No.:	A-302/18
LPAT Case No.:	PL190033
LPAT File No.:	PL190033
LPAT Case Name:	Mahindra Roopnarine and Vincent Villanis

Heard: June 19, 2019 in Hamilton, Ontario

APPEARANCES:

Parties

Representative

Mahindra and Melissa Roopnarine and Vincent Villanis Self Represented

1210800 Ontario Limited Laurel Ann Prociuk

MEMORANDUM OF ORAL DECISION DELIVERED BY L.M. BRUCE ON JUNE 19, 2019 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] 1210800 Ontario Limited (the “Appellant”) has appealed the decision of the City of Hamilton’s Committee of Adjustment (“CoA”) granting requested variances, with conditions, to permit the construction of a new two-storey single family dwelling at 13 Magill Street (the “subject property”), in the City of Hamilton (the “City”). The Appellant, represented by Laurel Ann Prociuk, is a Condominium Corporation located adjacent to the subject property. Ms. Prociuk is also one of the residents in the adjacent condominium. Mahindra and Melissa Roopnarine (the “Applicants”) are the owners of the property.

[2] The Tribunal was advised that the application was before the CoA on two occasions. Responding to concerns after the first appearance, the Applicants reduced the scale and modified the design of the proposed dwelling to be more in keeping with the character and streetscape of the neighbourhood.

[3] The subject property is a very small, shallow lot. It is a currently a vacant lot but had previously been occupied by a two-and-a-half storey duplex. Ms. Roopnarine advised the Tribunal that she did not know when the duplex was torn down but provided evidence that it existed as a residential dwelling until at least October 1987 (Exhibit 2).

[4] The variances sought by the Applicants reflect the small size of the property and area to permit the construction of a two-storey home with an attached garage (Exhibit 4).

[5] The Applicants are seeking the following variances:

- **Variance 1** - a residential lot area of 214 square metres (“sq m”) whereas 360 sq m is required.
- **Variance 2** - a front yard depth of 1.7 metres (“m”), whereas 4.5 m is required

- **Variance 3** - a rear yard setback of 1.2 m, whereas 7.5 m is required.
- **Variance 4** - two parking spaces within an attached garage at 5.8 m in length by 2.5 m in width instead of the zoning standard of 6.0 m in length and 2.7 m in width.
- **Variance 5** - manoeuvring space aisle width of 0 m will be provided instead of the minimum required aisle width of 6.0 m.
- **Variance 6** - the eave and gutter is proposed to be 1.25 m from the front lot line instead of the minimum required distance of 1.5 m.

[6] When considering an application for a minor variance from any by-law, the Tribunal must consider the four-part test set out in s. 45(1) of the *Planning Act* (“Act”). This provision requires the Tribunal to consider whether the requested variance: maintains the general intent and purpose of the official plan (the “OP”); maintains the general intent and purpose of the Zoning By-law (“ZBL”); is desirable for the appropriate development or use of the land and is minor.

[7] In addition, the Tribunal considers if the requested variance is consistent with the Provincial Policy Statements, 2014 (“PPS”) and conforms to the Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan”).

[8] City staff were not in attendance at the hearing. The City Planning Staff report was referenced by the Applicants in support of their application and has been relied on, in part, by this Member in reaching a conclusion on the requested variances.

EVIDENCE AND FINDINGS

[9] The subject lands are zoned E/S-481 (Multiple Dwellings, Lodges, and Clubs). A single-family dwelling is permitted within this zoning.

[10] Ms. Roopnarine stated that this area is characterized by its small lots. This was supported by the zoning map contained in the City's report to the CofA showing the lot fabric in the area. Ms. Roopnarine described the properties in the area on the west side of Magill Street as being built close to the front property line with small front lawns and in some cases no on-site parking. Adjacent to the subject property is a semi-detached single storey dwelling with which the proposed front wall of the dwelling would be aligned. Immediately across the street from the subject property is a parking lot serving the offices at 370 York Boulevard. Further north on the east side of Magill Street are residential dwellings also on smaller lots.

[11] The proposed development is for a modest two-storey, three-bedroom single family home. Due to the shallow lot amenity space would be located in the side yard. Ms. Roopnarine acknowledged that there is limited on-street parking in the area, and therefore they have designed their house with a two-car garage. There are no trees on the property that would be removed for the construction of the dwelling.

Appellant's Issues

[12] Ms. Prociuk outlined the Appellant's three areas of concern:

- a. Proximity to neighbouring condominium
- b. Privacy for condominium residents using their balconies/decks
- c. Parking on the road

[13] During this hearing, the two parties, assisted by the Tribunal, discussed each of these issues and considered options for mitigating these concerns.

[14] Photographs were provided by Ms. Prociuk as evidence of the proximity of the Condominium to the subject property. On discussion, Ms. Prociuk agreed that the separation distance for the closest portion of the house to the condominium is similar to other separation distances between dwellings in the area.

[15] Ms. Prociuk stated that residents in the condominium with balconies facing north, which the Tribunal notes overlooks backyards on Magill and Crooks Streets, are concerned with privacy issues arising from overlook from the Applicants' second storey. A single bedroom window is proposed at the rear wall of the second storey. There are no balconies or decks on the second floor of the Applicants proposed dwelling. The Applicants advised the Appellant and the Tribunal that to address this concern they would be prepared to frost the glass in this bedroom to mitigate privacy concerns. This was acceptable to Ms. Prociuk.

[16] The Applicants acknowledged that there is a parking shortage in the area and indicated that this is why they are proposing a dwelling with a two-car garage. No further evidence was provided by Ms. Prociuk on this issue.

[17] The Tribunal heard from two participants, Franco Corti, a resident who has lived in the area since 1967 was concerned that the dwelling would sit in front of the neighbouring dwelling. The Tribunal was provided evidence that the front of the proposed dwelling would align with the neighbouring dwelling and therefore is confident that Mr. Corti's concern is addressed. Dominic Sorbara also a nearby resident expressed concern about parking in the neighbourhood. He stated that the provision of a driveway takes parking spots off the street. The Tribunal notes while some minimal curb space will be lost, which is the equivalent of one parking spot, the Applicants will not create additional parking requirements.

Provincial Policies and OP

[18] The Tribunal concludes that the requested variances are consistent with the PPS and conforms to the Growth Plan. Further, the variances meet the tests under section 45(1) of the Act. The proposed development re-establishes a housing unit on an existing lot in an urban area. The subject property is identified as "Neighbourhoods" in the Urban Hamilton Official Plan, which permits a single detached dwelling on the property. The subject property is designated "Low Density Residential" on Schedule M-2 General Land Use in the Setting Sail Secondary Plan.

Zoning By-Law

Lot Size and Setbacks (Variances 1, 2, 3 and 6)

[19] The general intent and purpose of the ZBL requirement related to lot area, front yard depth, rear yard depth and setback for eaves and gutters is to ensure the property maintains the existing character and streetscape of the neighbourhood and allows sufficient parking and amenity space. Planning staff in their report opined that the proposed dwelling is in keeping with the existing dwellings within the neighbourhood and that the front yard depth is consistent with the existing front yard scenarios within the neighbourhood. The Tribunal concurs that these four variances maintain the general intent and purpose of the ZBL.

Parking (Variances 4 and 5)

[20] The ZBL parking provisions are to ensure that sufficient and safe parking can be provided. The space inside the parking garage provides sufficient room for two vehicles even with parking spots that are slightly smaller than required by the ZBL. Further, the 4.67 m length between the property line and right-of-way allows for the safe maneuvering of vehicles. The Tribunal concludes that the two parking variances meet the general intent and purpose of the ZBL.

Minor and Desirable

[21] The variances do not result in unmitigable impacts and can be considered minor. The construction of an appropriately sized dwelling on this property is desirable, returning the lot to its historical residential use and improving the streetscape from the current situation. The Tribunal acknowledges the respectful efforts by the Applicants and the Appellants to discuss issues associated with this proposed development. Their discussions have resulted in the resolution of the Appellants' concerns and demonstrated that any impacts arising from the proposed variances are minor.

ORDER

[22] The Tribunal orders that the appeal is dismissed, and the requested variances are authorized subject to the condition that the proposed building be built in accordance with the drawings included as Attachment 1 and that further that the second floor rear bedroom window facing west will be frosted.

“L.M. Bruce”

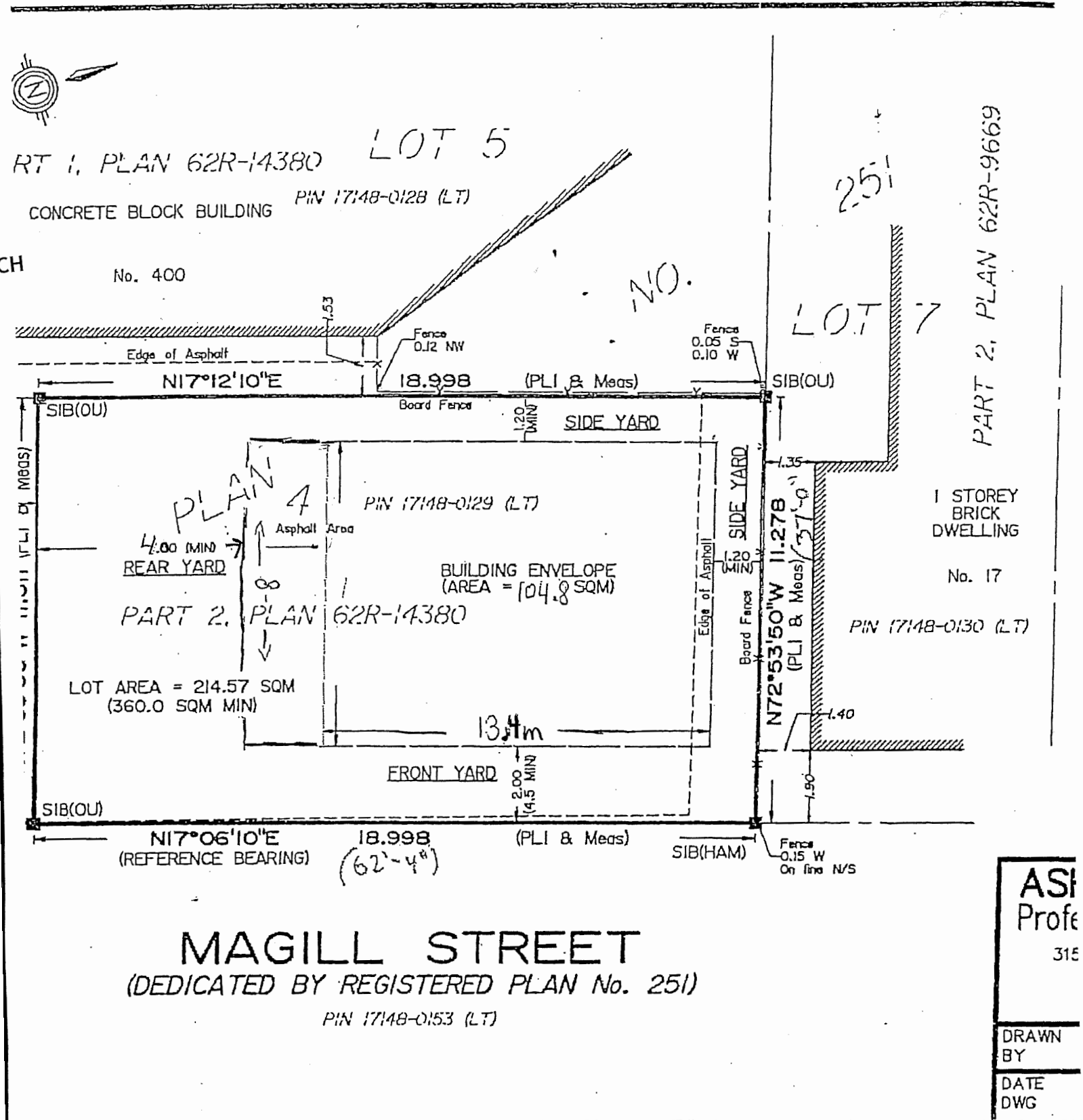
L.M. BRUCE
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1



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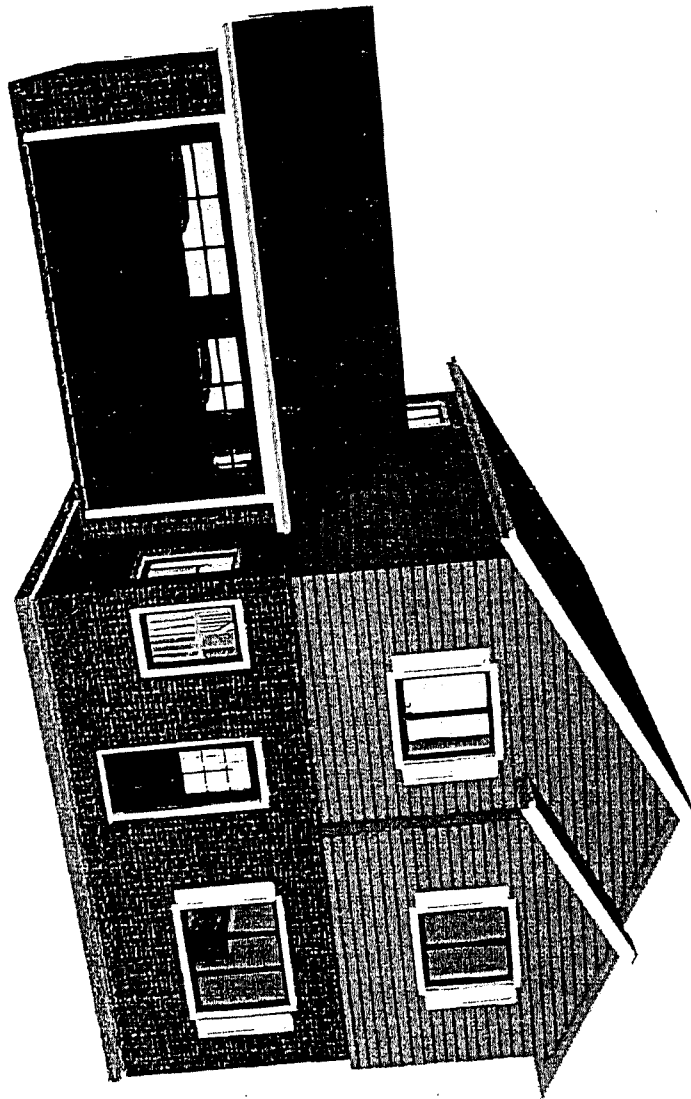
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 SKETCH (1)

EXHIBIT "B"

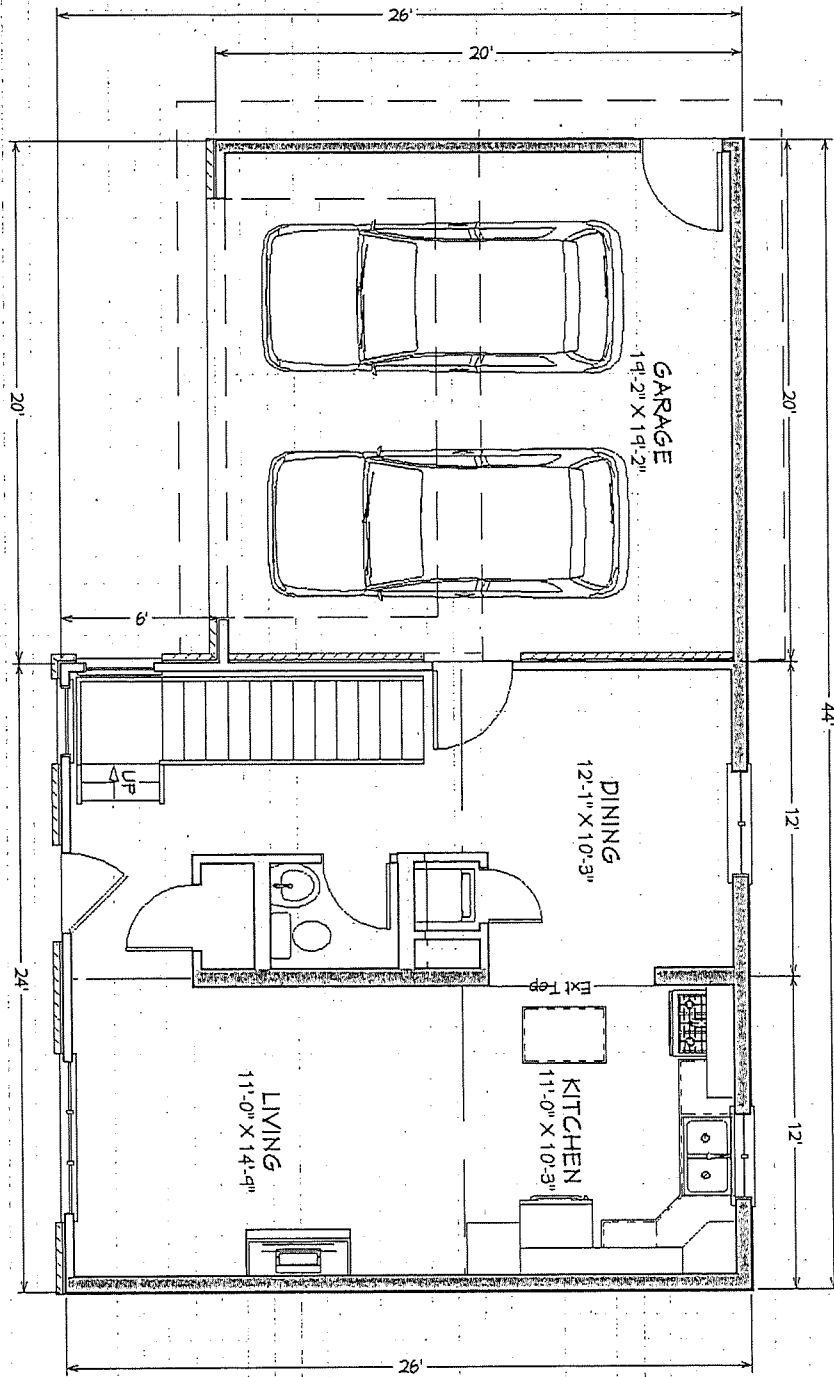
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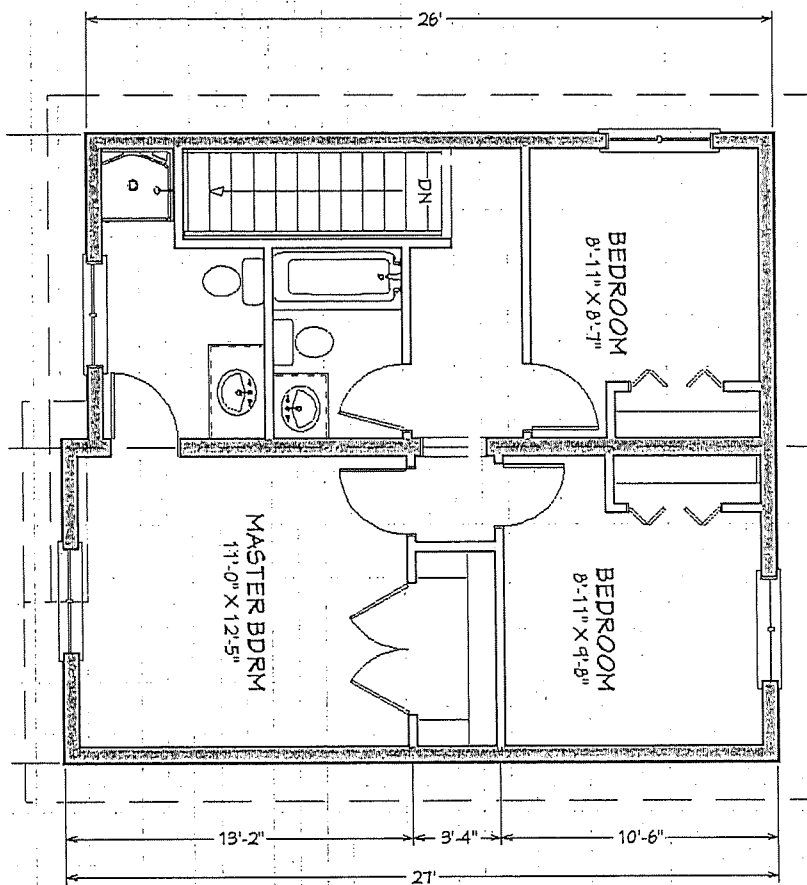


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M. J. [Signature]

SECRETARY TREASURER



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