

Development Services Committee Meeting – September 14, 2009

Direction on City Staff Involvement Respecting an Appeal to the Ontario Municipal Board
Committee of Adjustment Application A025/2009, 138 Stevenson Road South,
Frank Giordano, File No. A025/2009 (Ward 2)

Whereas the City owns 138 Stevenson Road South; and,

Whereas Frank Giordano of Gold Sheild Holdings Inc. has entered into a purchase and sale agreement with the City to acquire the subject site; and,

Whereas the purchase and sale agreement includes a number of conditions that must be satisfied including the approval of variances to permit a nine unit apartment building with a building height of 13.0 metres on the subject site; and,

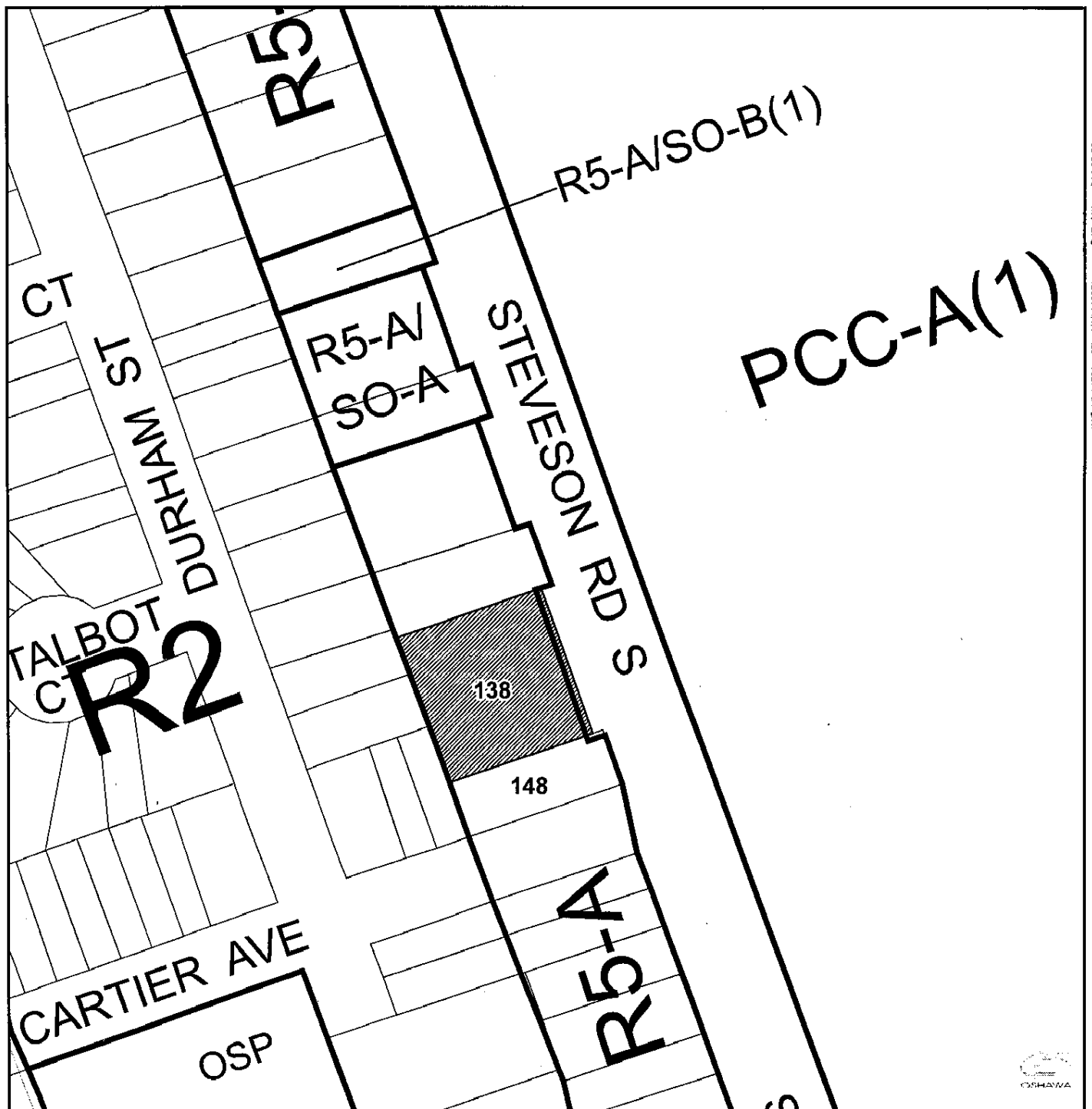
Whereas on June 16, 2009 a Committee of Adjustment (C. of A.) application was submitted by Frank Giordano, as authorized by City Council, to permit the proposed nine unit apartment building on the subject site in a R5-A (Residential) Zone; and,

Whereas on July 8, 2009, the C. of A. approved the application after considering comments from the applicant and one neighbour (Anthony Guglielmo) living at 148 Stevenson Road South; and,

Whereas the Development Services Department advised the C. of A. that it had no objection to the approval of the subject application; and,

Whereas on July 28, 2009 Anthony Guglielmo of 148 Stevenson Road South submitted an appeal to the Ontario Municipal Board (OMB) regarding the C. of A. decision to approve the application related to 138 Stevenson Road South; and,

Therefore, it is recommended that the Ontario Municipal Board be advised that City Council supports the decision of the Committee of Adjustment to approve application A025/2009 to permit a nine unit apartment building with a building height of 13 metres at 138 Stevenson Road South and the City not seek party or participant status on the appeal.

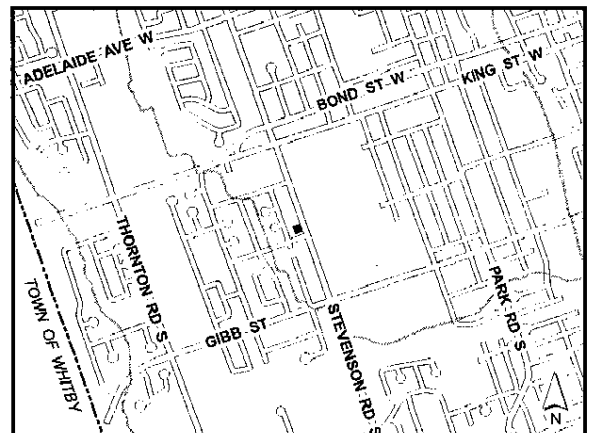


Attachment No. 1

DEVELOPMENT SERVICES DEPARTMENT

Item No.: DS-09-325
 Subject: Direction on City Staff Involvement
 Respecting an Appeal to the Ontario
 Municipal Board
 Address: 138 Stevenson Road South
 File No.: A025/2009


 Subject Site



To:	Committee of Adjustment	Item:		Date of Report:	July 3, 2009
From:	Planning Services	File:	A025/09	Date of Meeting:	July 8, 2009
Subject:	<i>Application for relief from the provisions of Zoning By-law No. 60-94 to permit an apartment building</i> <i>Address: 138 Stevenson Road South</i> <i>Applicant: Frank Giordano</i>			Ward: 2	

The comments from this Department are as indicated below:

- ☐ We have no objection to the approval of this application.
- ☒ We have no objection to the approval of this application subject to the comments/ conditions which are ☒ attached / ☐ listed below.
- ☐ We request that this application be tabled for the reasons which are ☐ attached/ ☐ listed below.
- ☐ We recommend that this application be denied for the reasons which are ☐ attached/ ☐ listed below.



Valerie Field, MCIP, RPP, Planner
Development and Urban Design

VF/j

c: K. Staunton, Engineering Services

Frank Giordano

S. 14(1), Municipal Freedom
of Information and Protection
of Privacy Act

138 Stevenson Road South was previously owned and used by the OPUC as a hydro sub-station. The site was transferred to the City in 2000 in a vacant condition. The site was cleaned to MOE criteria to permit residential development and a Record of Site Condition has been filed with MOE.

The subject site was declared surplus by City Council on July 16, 2007. The City has entered into a purchase and sale agreement with the applicant subject to a number of terms and conditions including the Committee of Adjustment granting minor variances to permit a nine unit apartment building with a building height of 13 metres.

The site is designated as Residential within the Main Central Area in the Oshawa Official Plan and is zoned R5-A (Residential) in Zoning By-law No. 60-94. The R5-A Zone permits single detached dwellings, semi-detached dwellings, duplexes, converted dwellings (2 units) and 6-unit apartment buildings.

The subject site has a lot frontage of 42.85 metres (140.6 ft.) and a net lot area of 1,527.6 square metres (16,443 sq. ft.) after the road widening is taken. The Region of Durham requires a 6.89 metre (22.6 ft.) road widening along the frontage of the property (shown as Part 1 on Plan 40R-25255).

A total of 9 apartment units on the property could be developed under the current zoning however it would have to be in the form of one 6-unit building and one 3-unit building since the R5-A Zone only permits a maximum of 6 units in any apartment building.

This Department has no objection to the subject application subject to the following advisory comments:

1. Site development will be subject to conditions and recommendation of the CLOCA Two-Zone Flood Plain Management Policy for a Reach of Goodman Creek and the final decision on any development within the subject site shall require CLOCA approval.
2. The proposed development will be subject to the City's Storm Sewer Connection By-law 9-90. In this regard, storm runoff from the subject site shall be serviced by an internal drainage facility and conveyed to the existing Regional storm sewer on Stevenson Road South. The extension of the existing storm sewer will be required. Any storm sewer works within the Stevenson Road South road allowance required to service the proposed development and also the amount of discharge from the site to the existing storm sewer will be subject to Region of Durham Approval.
3. The existing storm sewers in the vicinity of the subject site were not designed to accommodate foundation drains. The Development Services Department will require a proposal to illustrate how foundation drainage will be accommodated.
4. The proposed development will be subject to the City's Site Alteration By-law 85-2006. The proponent will be required to obtain a Site Alteration Permit from the City prior to commencement of any on-site grading/regarding.

DECISION UNDER THE PLANNING ACT

Committee of Adjustment Application for 138 Stevenson Road South

An application has been submitted by **Frank Giordano** for variances from the City's Zoning By-law No. 60-94.

The application relates to 138 Stevenson Road South, being Lots 128 and 129, Registered Plan 627, 40R-25255, Oshawa, Ontario.

The purpose and effect of the application is to permit an apartment building with the dimensions in Col. I below, instead of the dimensions in Col. II, below as required by Zoning By-law No. 60-94 for an apartment building in a R5-A (Residential) Zone.

	Col. I	Col. II
Maximum Number of Units in an Apartment Building	9 units	6 units
Maximum Building Height	13.0 m	10.5 m

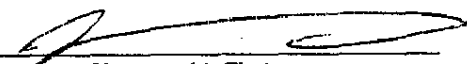
This application was heard by the Committee of Adjustment on July 8, 2009, and with Notice of Hearing having been given as directed by the Committee of Adjustment, THE DECISION OF THE COMMITTEE IS THAT THE APPLICATION BE APPROVED.


The APPROVAL of the application granted herein is based upon the following reasons:

1. The Committee is of the opinion that the variances granted are minor in nature.
2. The Committee is of the opinion that the variances granted are desirable for the appropriate development of the subject property.
3. The Committee is of the opinion that granting of the variances maintain the general intent and purpose of the Official Plan and Zoning By-law.

NOTE: Any appeal from the above decision must be made on or before July 28, 2009.

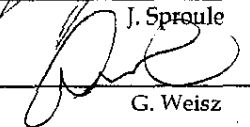
NOTE: The Planning Act provides for appeals to be filed by "persons". As groups or associations, such as residents or ratepayers groups which do not have incorporated status, may not be considered "persons" for the purposes of the Act, groups wishing to appeal this decision should do so in the name or names of individual group members, and not in the name of the group.


S. Karwowski, Chair

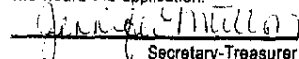

A. Fordham


P. Beal


J. Sproule


G. Weisz

I hereby certify that this is a true copy of the decision of the Committee of Adjustment and this decision was concurred in by a majority of the members who heard the application.


Secretary-Treasurer

Item No.	<u>DS-09-325</u>
Attachment No.	<u>6</u>

MINUTES UNDER THE PLANNING ACT

Committee of Adjustment Application for 138 Stevenson Road South

An application has been submitted by **Frank Giordano** for variances from the City's Zoning By-law No. 60-94.

The application relates to **138 Stevenson Road South**, being Lots 128 and 129, Registered Plan 627, 40R-25255, Oshawa, Ontario.

The purpose and effect of the application is to permit an apartment building with the dimensions in Col. I below, instead of the dimensions in Col. II, below as required by Zoning By-law No. 60-94 for an apartment building in a R5-A (Residential) Zone.

	Col. I	Col. II
Maximum Number of Units in an Apartment Building	9 units	6 units
Maximum Building Height	13.0 m	10.5 m

A meeting of the Oshawa Committee of Adjustment was held on July 8, 2009 at 6:00 p.m. in Committee Meeting Room, Second Floor, City Hall, Oshawa, Ontario.

Present: A. Fordham, P. Beal, S. Karwowski, J. Sproule, G. Weisz
R. Bedic

Also Present: Frank Giordano, S. 14(1), *Municipal Freedom*
Mike Aivaliotis, *of Information and Protection*
Antonio Guglielmo, *of Privacy Act*

A report received from the Department of Development Services stated no objection to the approval of this application.

F. Giordano explained that the site was formerly owned by the City of Oshawa and used as an OPUC transformer station. F. Giordano stated that he has a purchase and sale agreement with the City to purchase the subject site and develop an apartment building on the lands. The purchase and sale agreement is conditional on obtaining C. of A. approval from the City.

F. Giordano stated that the zoning permits the density being proposed (9 units) but another section of the by-law limits the number of dwelling units in a single building to 6 units. F. Giordano stated that 9 units could be built without C of A approval if there were two buildings with 6 units in one building and 3 units in another building. F. Giordano stated that the variance is being requested to permit 9 units in one building because it is not financially feasible to build two buildings due to servicing costs.

In response to a question from J. Sproule, F. Giordano stated that 15 parking spaces would be provided even though the by-law only requires 12 parking spaces for a 9 unit apartment building.

In response to a question from G. Weisz, F. Giordano stated that each unit would be approximately 1200 sq. ft. and would cater to older individuals. F. Giordano stated that the building would have an elevator.

In response to a question from G. Weisz, F. Giordano stated that there would be sufficient space north and south of the building to accommodate snow storage in the winter.

In response to a question from J. Sproule, F. Giordano stated that he has been in contact with the Central lake Ontario Conservation Authority (CLOCA) who have advised that the site needs to be raised 1 ft. to satisfy their concerns. F. Giordano stated that CLOCA will be involved in the site plan approval process.

In response to a question from P. Beal, R. Bedic explained the road widening that is being requested by the Region.

A. Guglielmo, the owner of the neighbouring property to the south, addressed the committee in opposition to the subject application. A. Guglielmo stated that the increase in the number of units and the building height are not minor. A. Guglielmo stated that he had tried to purchase the property from the City but feels he was misled by the City because he was told only 6 units were permitted on the property.

S. Karwowski advised A. Guglielmo that the C of A was not the appropriate forum to state concerns that he was misled by the City when trying to purchase the property.

A. Guglielmo reiterated his comments that the variances requested were not minor and should not be permitted.

F. Giordano stated that the proposed development will comply with the density permitted in the zoning by-law but the units will be in one building instead of two buildings. F. Giordano stated that constructing a single building is the only feasible way to build the density permitted by the by-law because servicing costs would be too high for 2 buildings.

In response to a question from A. Fordham, F. Giordano stated that the proposed increase in building height is the result of the architectural design of the building and the roof design cannot be accommodate under the existing height restriction.

Moved by A. Fordham, seconded by P. Beal,

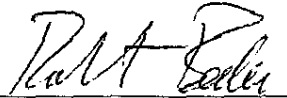
"THAT the application by Frank Giordano for 138 Stevenson Road South, Oshawa, Ontario, be approved."

The Chair declared that the application BE APPROVED.

The APPROVAL of the application granted herein is based upon the following reasons:

1. The Committee is of the opinion that the variances granted are minor in nature.
2. The Committee is of the opinion that the variances granted are desirable for the appropriate development of the subject property.
3. The Committee is of the opinion that granting of the variances maintains the general intent and purpose of the Official Plan and Zoning By-law.

CARRIED.



Robert Bedic, Assistant Secretary-Treasurer



Ontario Municipal Board
Commission des affaires municipales de l'Ontario
655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
TEL: (416) 326-6800 or Toll Free: 1-866-887-8820
FAX: (416) 326-5370
www.omb.gov.on.ca

Item No. DS-09-325
Attachment No. 7

APPELLANT FORM (A1)
PLANNING ACT – Bill 51

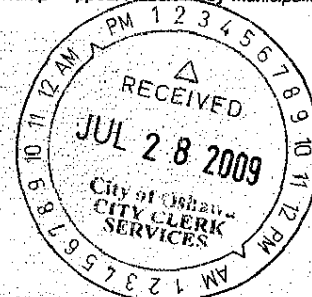
(SUBMIT TO MUNICIPALITY/APPROVAL AUTHORITY)

Instructions:

- Complete one form for each type of appeal you are filing.
- A filing fee of \$125 is required for each type of appeal you are filing. To view the Fee Schedule, visit the Board's website.
- The filing fee must be paid by certified cheque or money order, in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- Submit your completed appeal form(s) and filing fee(s) to either the Approval Authority or Municipality, as applicable, by the required filing deadline. The Approval Authority/Municipality will forward your appeal(s) and fee(s) to the Ontario Municipal Board.
- Please print clearly throughout the appeal form.
- The *Planning Act* and the *Ontario Municipal Board Act* are available at www.omb.gov.on.ca.

Receipt Number (OMB Office Use Only):

Date Stamp – Appeal Received by Municipality



Part 1: Appeal Type (Please check only one box)

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input checked="" type="checkbox"/> Appeal a decision	45(12)
Consent	<input type="checkbox"/> Appeal a decision or conditions imposed	53(19)
	<input type="checkbox"/> Appeal conditions imposed	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
Zoning By-law/Amendments	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

Part 2: Location Information

138 Stevenson Road South

Address and/or Legal Description of property subject to the appeal:

Municipality: Oshawa, L1J 5M1**Part 3: Appellant Information**First Name: Tony Last Name: Guglielmo

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable): _____

E-mail Address: _____

By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: S. 14(1), Municipal Freedom of Information and Protection of Privacy Act Alternate Telephone #: MFIPPA S. 14(1)

Fax #: _____

Mailing Address: _____
Street Address _____ Apt/Suite/Unit# _____
City/Town Oshawa
Province Ontario Country (if not Canada) _____
Postal Code MFIPPA S. 14(1)Signature of Appellant: [Signature] Date: July 28th, 2009**Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.**

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)**I hereby authorize the named company and/or individual(s) to represent me:**First Name: Ronald Last Name: Worboy

Company Name: _____

Professional Title: LawyerE-mail Address: rflw@worboyllaw.ca

By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 905-723-2288 Alternate Telephone #: 1-877-499-4671Fax #: 905-576-1355Mailing Address: 153 Simcoe St. N. _____
Street Address _____ Apt/Suite/Unit# _____
City/Town Oshawa
Province Ontario Country (if not Canada) _____
Postal Code L1G 4S6Signature of Appellant: [Signature] Date: July 28th, 2009

(continued on next page...)

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

☒

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

Part 5: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please Print)

I, Tony Guglielmo, Hereby appeal the Decision under the Planning Act by the Committee of Adjustments Application for 138 Stevenson Road South, dated July 8th, 2009. A copy of the decision is attached.

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required please continue in Part 8 or attach a separate page.

(Please Print)

- a) The permitted nine units instead of six units is a major variance, it is not a minor variance;
- b) The permitted height of 13 metres instead of 10.5 metres is a major variance, it is not a minor variance.
- c) No other buildings on the west side of Stevenson Road, Oshawa, are (3) three stories.

****The following sections (a&b) apply only to appeals of Zoning By-law Amendments under Section 34(11) of the Planning Act.**

- a) **DATE APPLICATION SUBMITTED TO MUNICIPALITY:** _____
(If application submitted on or after January 1, 2007 please use the OMB1 'Bill 51' form.)

- b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:

****If more space is required please continue in Part 8 or attach a separate page.**

Part 6: Related Matters (if known)

Are there other appeals not yet filed with the Municipality?

YES ☐NO ☒

Are there other planning matters related to this appeal?

YES ☐NO ☒

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please Print)

Part 7: Scheduling Information

How many days do you estimate are needed for hearing this appeal? ☐ half day ☐ 1 day ☒ 2 days ☐ 3 days
☐ 4 days ☐ 1 week ☐ More than 1 week – please specify number of days: _____

How many witnesses do you expect to have at the hearing? One

Describe witness(es)' area of expertise: _____

Do you believe this matter would benefit from mediation?

YES ☐NO ☒

Do you believe this matter would benefit from a Prehearing Conference?

YES ☒NO ☐If yes, why? Attempt to resolve this situation as I am the next door neighbor.**Part 8: Other Applicable Information **Attach a separate page if more space is required.**

The variances as permitted are not good planning in this neighbourhood.

The front yard setback is 20' and the plan as filed with the City of Oshawa is less than 20', Same should have been a consideration of the Committee of Adjustment for the City of Oshawa.

I attended the hearing of the Committee of Adjustment and voiced my objections. A member of the Committee, Pauline Beale, stated that, "What are you doing here?"

I asked, "What do you mean?"

The said member of the Committee stated in a loud voice, "You are not supposed to be here, wasting the Committee's time."

The City of Oshawa Committee of Adjustment did not conduct a fair meeting with a decision.

Part 9: Required Fee

Total Fee Submitted: \$ 125.00

Payment Method: ☒ Certified cheque * ☐ Money Order

- The payment must be in Canadian funds, **payable to the Minister of Finance.**
- **Do not send cash.**

*Or Solicitor's general or trust account cheque.

DECISION UNDER THE PLANNING ACT

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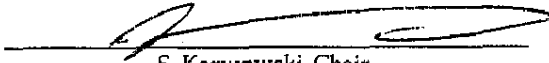
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S. Karwowski, Chair


A. Fordham


P. Beal


J. Sproule


G. Weisz

I hereby certify that this is a true copy of the decision of the Committee of Adjustment and this decision was concurred in by a majority of the members who heard the application.


Secretary-Treasurer