

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario

By-law 14-183



**ISSUE DATE:** May 1, 2014

**CASE NO(S):** PL130912

Appellant: DiCenzo Construction Company Limited  
Subject: By-law No. 13-183  
Legislative Authority: Subsection 34(19) of the *Planning Act*,  
R.S.O. 1990, c. P. 13, as amended  
Municipality: Hamilton  
OMB Case No.: PL130912  
OMB File No.: PL130912

Appellant: DiCenzo Construction Company Limited  
Subject: By-law No. 13-184  
Legislative Authority: Subsection 34(19) of the *Planning Act*,  
R.S.O. 1990, c. P. 13, as amended  
Municipality: Hamilton  
OMB Case No.: PL130912  
OMB File No.: PL130913

Appellant: DiCenzo Construction Company Limited  
Subject: Proposed Plan of Subdivision  
Legislative Authority: Subsection 51(39) of the *Planning Act*, R.S.O.  
1990, c. P. 13, as amended

Property  
Address/Description: 528 Jones Road  
Municipality: Hamilton  
Municipal File No.: 25T-201110  
OMB Case No.: PL130912  
OMB File No.: PL131035

Appellant: DiCenzo Construction Company Limited  
Subject: Proposed Plan of Condominium  
Legislative Authority: Subsection 51(39) of the *Planning Act*, R.S.O.  
1990, c. P. 13, as amended

Property  
Address/Description: 528 Jones Road  
Municipality: Hamilton  
Municipal File No.: 25CDM-201116  
OMB Case No.: PL130912  
OMB File No.: PL131036

<b>APPEARANCES:</b>	
<b>Parties</b>	<b>Counsel</b>
DiCenzo Construction Company Limited	R.D. Cheeseman
1752350 Ontario Inc. (Village Estate Group)	M. Rudolph
City of Hamilton	B. Duxbury
<b>HEARING EVENT INFORMATION:</b>	
Hearing	Held in Hamilton, Ontario on April 15, 2014

## **DECISION DELIVERED BY H. JACKSON AND PARTIAL ORDER OF THE BOARD**

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### **INTRODUCTION**

[1] Village Estate Group (the "Applicant") applied for a Zoning By-law Amendment, a Draft Plan of Subdivision, and Draft Plan of Common Element Condominium for their lands located at 528 Jones Road in the City of Hamilton (the "City") for the purposes of creating 20 lots for single detached dwellings, known as the "Waves Development". City Council passed By-law Nos. 13-183 and 13-184 ("By-laws") with respect to these lands on July 12, 2013 and further approved a Draft Plan of Subdivision 25T-201110, and the Draft Plan of Condominium 25CDM-201116.

[2] Dicenzo Construction Company Limited (the "Appellant"), who own lands immediately to the south of the subject property, known as "Blue Shores Development", appealed the passing of the By-laws and the associated Draft Plan of Subdivision and Draft Plan of Condominium on the basis that the proposed development is too dense, does not respect the character of the surrounding area, the condominium road is too narrow, and there is insufficient on-street parking.

[3] At the commencement of the hearing, the parties advised that a settlement had

been reached. Minutes of Settlement were entered as Exhibit 4. The settlement was not opposed by the City. John Ariens, retained by the Applicant, provided land use planning opinion evidence in support of the settlement.

[4] The parties requested that the Board dismiss the appeal of Zoning By-law No. 13-184 related to the zoning of the open space adjacent to the lakeshore, and allow in part the appeal of Zoning By-law No. 13-183, the Draft Plan of Subdivision 25T-201110, and the Draft Plan of Condominium 25CDM-201116. The parties requested that the Board's Order be withheld until the final number of parking spots (to be inserted to Zoning By-law No. 13-183) is determined through the site plan approval process.

## **EVIDENCE**

[5] Mr. Ariens described the subject property and the background to the matter. He testified that the property is a 1.47 ha (3.6 acre) lakefront property with 125 m of frontage on Jones Road and 102 m frontage on Cope's Lane. The existing house and accessory buildings are being demolished and the owners have obtained a Ministry of Natural Resources ("MNR") permit to reconstruct the sea wall to protect against erosion. The surrounding lands are low density predominately single detached dwellings.

[6] The original development application included an internal private roadway with 17 internal lots and three external lots facing Jones Road, all for single detached dwellings. The range in lot frontage was proposed to be between 14 m to 17 m (46 feet to 56 feet). The intent was to develop an exclusive enclave of unique, modern, design-oriented single detached dwellings. This was to be done by using landscaping and entry features to create a degree of separation from the public street. The private road was identified as Block 21, and Block 22 consists of the landscaping elements. Together these form the condominium plan. The road was proposed to be 7.5 m wide with 6 m of driving and 1.5 m of sidewalk on one side.

[7] Modifications to the development plan were made through the municipal approval process, and the modified plan was supported and recommended for approval by planning staff and City Council. The modifications relate primarily to the common

elements, as follows:

- The eastern portion of the lands was thought to be an important area for migratory birds, however, not many birds were found during an investigation. Nevertheless, it was decided to maintain 3 m of land on the east side of the property as a common element to provide for protection of the existing hedgerow. This will also provide for privacy along the east side of the subject property.
- The common element along Cope's Lane was maintained but the entrance feature was removed for fire safety.
- The buffer on the west side on Lot 1 and Lot 17 was removed but the two gateway features on the west entrance remain.
- A 6 m access maintenance easement was put in place so that the lots that back onto the lakeshore can have access to maintain the seawall if necessary.

[8] As described by Mr. Ariens, because the amalgamated City is not covered by a comprehensive zoning by-law, two By-laws were approved. The open space zone along the lakefront falls under the City of Hamilton By-law No. 05-200, whereas the balance of the property falls under the former City of Stoney Creek By-law No. 3692-92.

[9] The appeal by Blue Shores Development raised concerns regarding the proposed lot area, lot frontage, the narrow road, insufficient internal parking, and the modern design of the homes, as the Appellant's Blue Shores Development directly to the south is a more conventional subdivision design.

[10] The parties entered into settlement discussions and agreed to a plan that satisfies the Appellant's concerns. The proposal continues to have three lots facing Jones Road and 17 internal lots, however as per the settlement, the private road has been widened to 8.4 m. This includes a 6 m driving lane and 2.4 m additional width to accommodate on street parking on one side of the road, equivalent to a City street curb

to curb design with parking on one side. This results in the provision of six on-street parking spaces, with another three that could be added, depending on whether the driveway for Lot 1 can come off Jones Road rather than the private road. The driveway configuration will be determined as part of the site plan approval stage.

[11] Due to the widening of the private road, the depth of the lots that front onto the private road on the east side is reduced and the frontage of three lots on the west side of the road is also reduced. The original by-law required a six m minimum front yard setback, however, the settlement requires that the setback be reduced to 4.5 m to the dwelling for all internal lots. For Lots 18, 19, and 20, the setback is 2 m because these dwellings have a common element landscaping feature in front of them. The by-law was also adjusted to clarify the flankage yard. These changes are reflected in the proposed amending Zoning By-law.

[12] Concessions were also made to the design of some of the homes. The three lots that front onto Cope's Lane (Lot 10, 11 and 20) identified as Block 2 will have homes that are more conventional in design, to tie-in with the design of the Appellant's homes immediately to the south. The homes in Block 2 will be limited to 2.5 storeys. Lots 7, 8 and 9 on the east portion of the property, identified as Block 1, will be limited to two storey flat-roof houses. This lower profile will mitigate against overlook to the east and will tie-in to the existing more conventional development to the south and improve the view to the northwest from Cope's Lane.

[13] The changes agreed to in the settlement are reflected in the proposed Zoning By-law for the R-2 zone as special exemption "R2-62". The proposed Amending Zoning By-law is provided in Appendix A to the minutes of settlement. The number of on-street visitor parking spaces is left blank and is to be provided as part of the site plan approval process. A minimum of six spaces is anticipated, and a maximum of nine spaces may be provided. The revised Draft Plan of Subdivision is provided in Appendix B to the minutes of settlement and the Draft Plan of Common Element Condominium is provided in Appendix C to the minutes of settlement. The Applicant consents to the conditions of approval for the plans of subdivision and condominium imposed by the City.

[14] The Board is satisfied that the revised proposal, as presented herein, satisfies the concerns of the Appellants and the neighbours, and has been subject to an extensive and thorough planning process, and in that regard finds that the proposed revised development represents good and proper planning.

## **DECISION**

[15] The Board orders that the appeal against By-law 13-184 is dismissed. The Board orders that the appeal against By-law 13-183 is allowed in part, and By-law 3692-92 is amended as set out in Attachment 1.

[16] The Board orders that the appeal of the draft plan of subdivision is allowed in part, and is approved as set out in Attachment 2.

[17] With the consent of the parties and pursuant to s. 51(56.1) of the *Planning Act* ("Act"), the City shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purposes of s. 51(58) of the Act. In the event that there are any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Board may be spoken to.

[18] The Board orders that the appeal of the draft plan of condominium is allowed in part, and is approved as set out in Attachment 3.

[19] With the consent of the parties and pursuant to s. 51(56.1) of the Act, the City shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of condominium for the purposes of s. 51(58) of the Act. In the event that there are any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Board may be spoken to.

[20] The Board's order is withheld, pending finalization of the parking requirements. When the final planning instruments are agreed upon and filed, the Board's order will issue.

*"Helen Jackson"*

HELEN JACKSON  
MEMBER

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario

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ATTACHMENT 1

**CITY OF HAMILTON**

**BY-LAW NO. \_\_\_\_**

**To Amend Zoning By-law No. 3692-92 (Stoney Creek)  
Respecting the Lands Located at 528 Jones Road**

**WHEREAS** the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. Did incorporate, as of January 1<sup>st</sup>, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "City of Stoney Creek" and is the successor of the former Regional Municipality, namely "The Regional Municipality of Hamilton-Wentworth";

**AND WHEREAS** the City of Hamilton Act, 1999, provides that the Zoning By-law and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**AND WHEREAS** Zoning By-law No. 3692-92 (Stoney Creek) was enacted on the 8<sup>th</sup> day of December 1992, which was approved by the Ontario Municipal Board by Order dated the 31<sup>st</sup> day of May 1994;

**AND WHEREAS** this By-law will be in conformity with the Official Plan of the City of Hamilton (the Official Plan of the City of Stoney Creek), upon approval of Official Plan Amendment No. \_\_\_\_ proposed by the City of Hamilton but not yet approved in accordance with the provisions of the Planning Act.

**AND WHEREAS** the Council of the City of Hamilton, in adopting Item of Report \_\_\_\_ of the Planning Committee, at its meeting held on the day of \_\_, 2014, recommended that Zoning By-law No. 3692-92 (Stoney Creek), be amended as hereinafter provided;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. That Map No. 2 of Schedule "A", appended to and forming part of By-law No. 3692-92 (Stoney Creek), is amended by changing from the Rural Residential "RR" Zone to the Single Residential

*CA B*

"R2-62" Zone, Modified, on the lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".

2. That Sub-section 6.3.7, "Special Exemptions", of Section 6.3 Single Residential "R2" Zone, of Zoning By-law No. 3692-92 (Stoney Creek), be amended by adding Special Exemption "R2-62", as follows:

"R2-62" – 528 Jones Road, Schedule "A", Map No. 2

For the purpose of this By-law, a Common Element Condominium road shall be deemed to be a street.

Notwithstanding the provisions of Paragraphs (a), (b), (c), (d), (e) and (g) of Section 6.3.7 "Zone Regulations", on those lands zoned "R2-62" by this By-law, the following shall apply:

- |                          |   |  |
|--------------------------|---|--|
| (a) Minimum Lot Area     | - | 380 sq. m.   |
| (b) Minimum Lot Frontage | - | 12m measured 7.5m from the front lot line.   |
| (c) Minimum Front Yard   | - | 4.5m to the dwelling and 6.0m to the garage door. Where a front yard abuts a common element block the front yard setback to the dwelling will be 2.0m.   |
| (d) Minimum Side Yard    | - | 1.25m for an interior and flankage yard, except 0.6m where a southerly side yard abuts a common element condominium block that abuts Copes Lane. A 0.6m minimum side yard shall only be permitted on the side yard of the dwelling that does not contain an attached garage.   |
| (e) Minimum Rear Yard    | - | 7.5m, except as provided in Clauses 1, 2, and 3 below:<br><br>(1) On a lot that abuts Lake Ontario, a minimum 7.5m setback shall be provided and maintained from a Conservation/Hazard Land (P5) Zone that is not a common element condominium block;<br><br>(2) On a lot that abuts Lake Ontario and also abuts a common element condominium block along a rear lot line, a minimum rear yard of 1.25m shall be provided and maintained; and,<br><br>(3) On a lot that does not abut Lake Ontario, but does abut a common element condominium block along a |

rear lot line, a minimum rear yard of 4.5m shall be provided and maintained.

(f) Maximum Building Height

11 metres, except:

(i) on the lands, the extent and boundaries of which are Block 2 shown on a plan hereto annexed as Schedule "B", 11 metres but only 2 ½ storeys shall be permitted;

(ii) on the lands, the extent and boundaries of which are Block 1 shown on a plan hereto annexed as Schedule "B", 9 metres but only 2 storeys shall be permitted.

(g) Maximum Lot Coverage

62 percent

In addition to the parking provisions of Section 6.3.4 of the R2 Zone, \_\_\_ on-street visitor parking spaces will be provided on the Common Element Condominium Road.

Notwithstanding the provisions of paragraphs (a) and (b) of Section 4.10.3 "Dimensions of Parking Spaces", on those lands zoned "R2-62" by this By-law, the following shall apply:

Each parallel parking space shall have a minimum width of 2.4m and a minimum length of 6.7m. End spaces which have a clear, unobstructed approach, shall have a minimum length of 5.5m.

3. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the "R2" Zone provisions, subject to the special requirements referred to in Section 2 of this By-law.
4. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

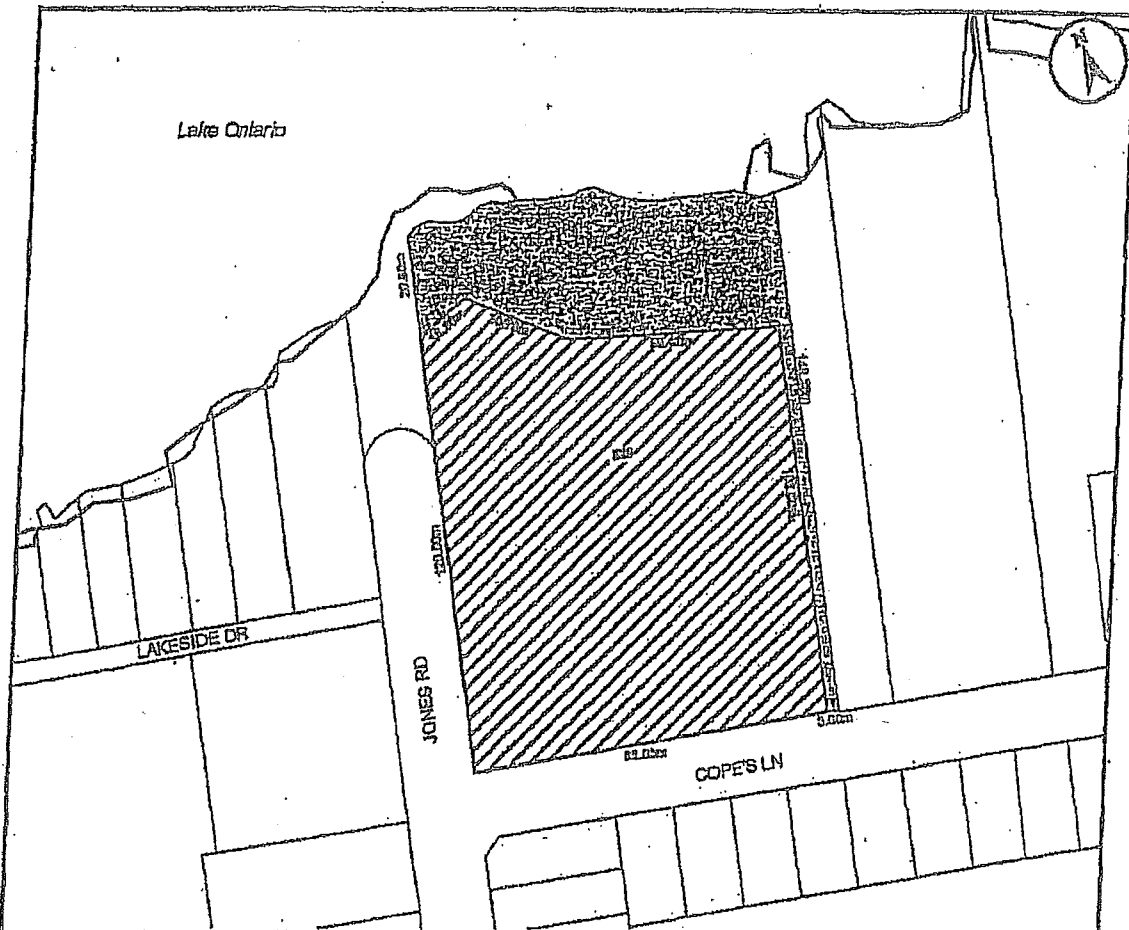
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R. Bratina  
Mayor

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Rose Caterini  
Clerk







This is Schedule "A" to By-law No. 13- 183  
 Passed the ..... day of ....., 2013

Wray  
 Clark

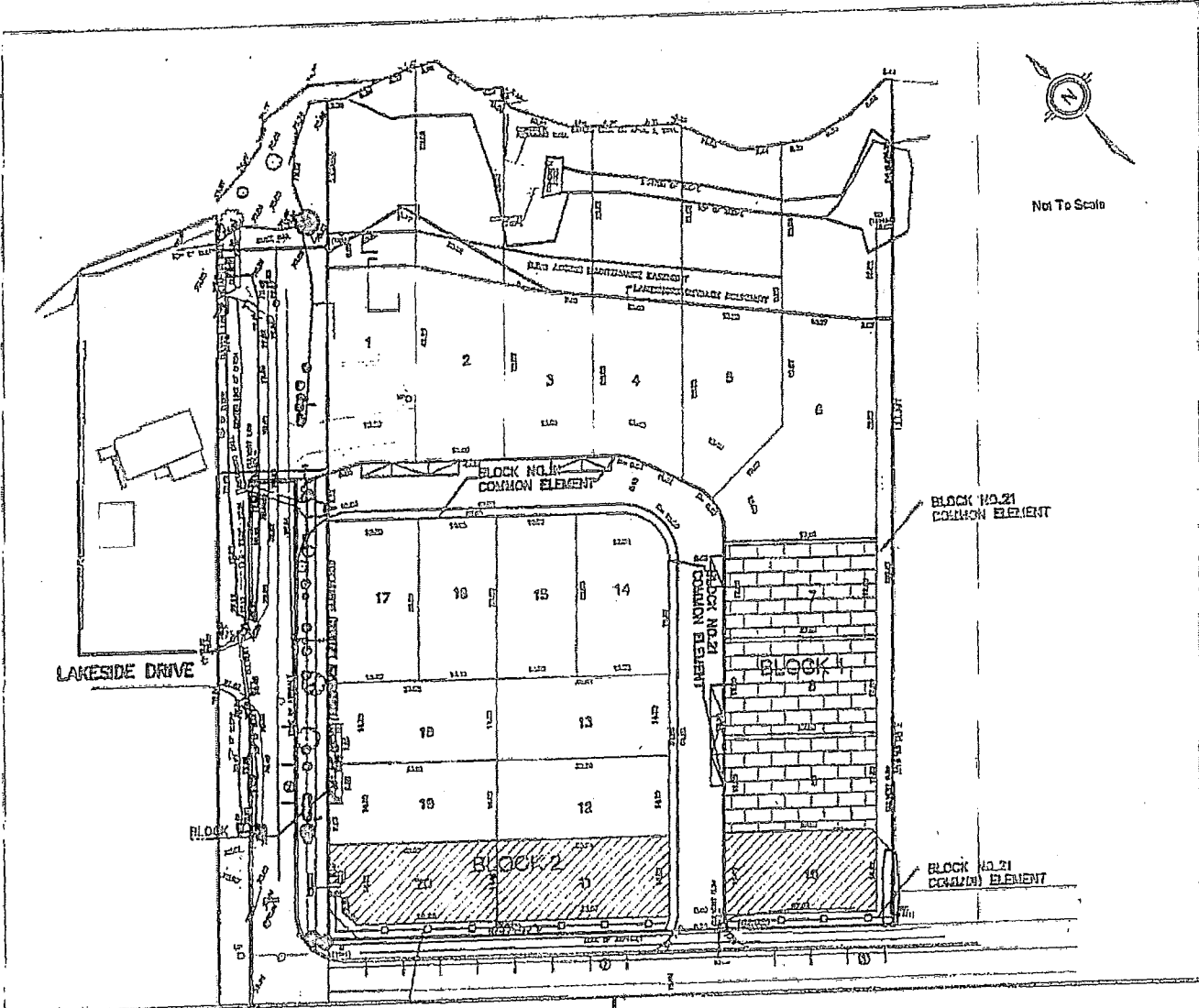
**Schedule "A"**  
 Map Forming Part of  
 By-law No. 13- 183  
 to Amend By-law No. 3692-92

**Subject Property**  
 528 Jones Road, Stoney Creek  
 Change in Zoning from the Rural Residential "RR" Zone to the Single Residential "R2-S2" Zone.  
 Refer to Zoning By-law No. 05-200

Scale: N.T.S.	File Name/Number: ZUC-H-001 251-20110 25004-20110
Date: April 28, 2013	Planner/Technician: GM/DB
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	



*CRB*



This Schedule "B" to By-law No. 14-

Passed the .....day of ....., 2014

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

### Schedule "B"

Map Forming Part of By-law  
No. 13-183

#### Subject Property

528 Jones Road, Stoney Creek



BLOCK 1 - MAXIMUM HEIGHT OF BUILDING TO BE 9 METRES BUT ONLY 2 STOREYS SHALL BE PERMITTED



BLOCK 2 - MAXIMUM HEIGHT OF BUILDING TO BE 11 METRES BUT ONLY 2 1/2 STOREYS SHALL BE PERMITTED

Scale: N.T.S.	File Name/Number
Date:	Planner/Technician

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

*CAH 8/14*