



# Corporate Report

Clerk's Files

Originator's  
Files 'A' 403/08 W11

---

**DATE:** December 9, 2008

**TO:** Chair and Members of Planning and Development Committee  
Meeting Date: January 12, 2009

**FROM:** Edward R. Sajecki  
Commissioner of Planning and Building

**SUBJECT:** **Appeal to the Ontario Municipal Board  
Committee of Adjustment Decision  
Minor Variance Application 'A' 403/08 W11  
Christine Murphy  
11 Barry Avenue  
South of Thomas Street, west of Queen Street South Ward 11**

---

**RECOMMENDATION:** That the Report dated December 9, 2008, from the Commissioner of Planning and Building regarding the appeal filed by Legal Services by letter be continued and that Legal Services, together with other appropriate City staff attend the Ontario Municipal Board hearing in support of the appeal of the decision of the Committee of Adjustment under file 'A' 403/08, Christine Murphy, granted on November 20, 2008, regarding the property at 11 Barry Avenue.

**BACKGROUND:** On November 20, 2008, the Committee of Adjustment considered minor variance application, 'A' 403/08 W11 to permit a home occupation within the detached garage and one (1) parking space to be located off site; whereas By-law 0225-2007, as amended, requires home occupations to be located within a detached dwelling and would require one additional parking space for the home occupation use to be located on site in this instance.

Background information is provided in Appendix I-1.

**COMMENTS:**

The applicant indicated that they were proposing to operate a hobby/workshop use on a part-time basis and advised that they will use items such as photo frames, wall sconces, candlesticks, chairs, tables, picture frames and small pieces of furniture, and will sand and paint the items to make them more modern. The applicant wished to be able to sell these items from within the detached garage. They advised the Committee that they own four (4) vehicles noting that two (2) are stored on site and two (2) are stored off site on a farm property that they own. The applicant explained that visitors will not be on the property for longer than ten minutes and are able to park on the street. They further advised that the business will be operated seasonally from spring to autumn on Wednesday to Friday from 10:00 a.m. to 2:00 p.m. and on Saturday from 9:00 a.m. to 1:00 p.m.

The Planning and Building Department recommended that the variance application be refused on the basis that it does not maintain the general intent and purpose of the Official Plan or the Zoning By-law, is not minor in nature nor is it desirable for the appropriate use of the land.

**Official Plan**

The subject property is designated "Residential Low Density II" Special Site 3 which allows for uses associated with residential development, including: special needs housing, accessory offices for physicians, dentists, health professional and drugless practitioners in their principal private residence; home occupations in detached dwellings; parks; and community uses. In addition, lands identified as Special Site 3 in the Streetsville District Policies of Mississauga Plan may also be used for offices. The applicant is seeking to allow a use which is not associated with residential development and appears to function as a retail commercial establishment. The proposed retail operation does not maintain the general intent and purpose of the Official Plan.

**Zoning By-law**

The subject property is zoned "R3" (Residential). The residential zone provisions allow for detached dwellings and do not allow for any commercial establishments aside from the office of a resident physician/dentist, drugless practitioner or health professional and a

home occupation, provided that the criteria contained in Subsection 4.1.16 or Subsection 4.1.17, respectfully, of By-law 0225-2007, as amended, are met. One of the criteria in Subsection 4.1.16 specifies that home occupations are restricted to the following occupations: artist/artisan; music instruction; office (except a resident physician, dentist, drugless practitioner or health professional); and tutoring. Any home occupation in this zone cannot exceed 25% of the gross floor area - residential of the detached dwelling up to a maximum of 50 m<sup>2</sup> (538.21 sq. ft.) and shall be conducted wholly within the detached dwelling. The general intent of the Zoning By-law is to ensure that the residential character of the area is maintained. The proposed retail business fails to meet a number of the criteria listed in Subsection 4.1.16 necessary to be considered as a home occupation. The proposed retail operation does not maintain the general intent and purpose of the Zoning By-law.

#### **Four Tests for Minor Variances**

An application for a minor variance from a Zoning By-law must meet all four tests established under the *Planning Act*, namely: the application must meet the general intent and purpose of the Official Plan; the application must meet the general intent and purpose of the Zoning By-law; the application must be desirable for the appropriate development or use of the land; and, the application must be minor. The failure to satisfy just one of these tests is fatal to the application.

The Committee of Adjustment considered the submissions put forward and was satisfied that the request was desirable for the appropriate temporary use of the property. The Committee indicated that the use is similar to those located within the Streetsville community and believed that, with the restrictions on hours of operation and signage, will have limited impact on the neighbours. They were satisfied that the proposed retail store as a home occupation being within the detached garage providing no additional parking is within the intent of the City's Official Plan and Zoning By-law. The application was approved for a temporary period of five (5) years subject to the conditions that the decision is made personal to Mrs. C. Murphy, that there will be no

retail signage or advertising on the property, the hours of operations shall be restricted to Wednesday to Friday from 10:00 a.m. to 2:00 p.m. and Saturday from 9:00 a.m. to 1:00 p.m., and that all activities are to be conducted within the detached garage with no outside storage or display of items for sale permitted on site.

### **OMB Appeal**

The Committee of Adjustment's decision to approve the variance was to be final and binding on December 17, 2008. It was the opinion of this Department that the Committee's decision should be appealed by City Council to the Ontario Municipal Board (OMB). Accordingly, the Planning and Building Department requested that Legal Services prepare the appropriate Notice of Appeal to the OMB and file a "placeholder" appeal prior to the appeal period expiring pending further instruction from Council.

### **CONCLUSION:**

The minor variance approved by the Committee of Adjustment under file 'A' 403/08 W11, does not meet the general intent of the Official Plan or the Zoning By-law, is not minor in nature and is not desirable for the appropriate use of the land. This approval by the Committee has broader implications with respect to the "Residential" Policies, and could set an undesirable precedent.

### **ATTACHMENTS:**

Appendix I-1 - Committee of Adjustment Decision 'A' 403/08  
Appendix I-2 - Land Use Map  
Appendix I-3 - Zoning Map  
Appendix I-4 - General Context Map  
Appendix I-5 - Aerial Photograph

---

Edward R. Sajecki  
Commissioner of Planning and Building

*Prepared By: Krystina Collins, C of A Planner*



File: "A" 403/08  
WARD 11

## COMMITTEE OF ADJUSTMENT

IN THE MATTER OF SECTION 45(1) OR (2)  
of The Planning Act R.S.O. 1990, c.P.13, as amended  
- and -  
IN THE MATTER OF ZONING BY-LAW 0225-2007  
as amended  
- and -  
IN THE MATTER OF AN APPLICATION BY

Christine Murphy

on Thursday November 20, 2008

Christine Murphy is the owner of Part of Lots 1, 2, 7 and 8 and Block 3, Registered Plan STR 4, located and known as 11 Barry Avenue, zoned R3, Residential. The applicant requests the Committee to authorize a minor variance to permit a home occupation within the detached garage and permitting one (1) parking space to be located off site; whereas By-law 0225-2007, as amended, requires the home occupation to be located within the detached dwelling and would require one additional parking space for the home occupation use to be located on site in this instance.

Mrs. C. Murphy, the property owner, attended and presented the application to permit a home occupation within the detached garage and providing an off site parking space. Mrs. Murphy advised that she wishes to operate a hobby/workshop use on a part-time basis within the garage. She advised that she uses items, such as photo frames, wall sconces, candlesticks, chairs, tables, picture frames, and small pieces of furniture, and sands and paints them to make them more modern. Mrs. Murphy advised that she uses water based paints and will not use solvents or welding for her projects. She advised that she wishes to be able to sell these items from within the garage. Mrs. Murphy indicated that they own four (4) vehicles noting that two (2) are stored on site and two (2) are stored off site on a farm property that they own. Mrs. Murphy indicated that the business will be operated seasonally from spring to autumn on Wednesdays to Fridays from 10:00 a.m. to 2:00 p.m. and on Saturdays from 9:00 a.m. to 1:00 p.m.. She noted that visitors will not be on the property for longer than ten minutes and are able to park on the street.

The Committee reviewed the information and plans submitted with the application.

The City of Mississauga Planning and Building Department commented as follows (November 18, 2008):

### "1.0 RECOMMENDATION"

The Planning and Building Department recommends that the application be refused.

### 2.0 BACKGROUND

#### **Mississauga Plan**

<i>Planning District:</i>	<b>Streetsville</b>
<i>Designation:</i>	<b>Residential Low Density II</b>
	<b>Special Site # 3</b>

Discussion: Lands  
designated "Residential Low Density II" in the Streetsville District allow detached, semi-detached, triplex dwellings, street townhouse dwellings and duplex dwellings at a density of 17-37 units per net residential hectare. In addition, lands identified as Special Site 3 may also be used for offices. Uses related to residential development, such as special needs

File: "A" 403/08  
WARD 11

housing, accessory offices for physicians, dentists, health professionals and drugless practitioners in their principle private residences, home occupations in detached dwellings, parks and community uses are also permitted. The request currently before the Committee is seeking to allow a use which is not associated with residential development, and furthermore, appears to function as a retail commercial establishment. Consequently, the request does not uphold the general intent and purpose of the Official Plan.

### ***Zoning By-law 0225-2007***

***Zoning:*** "R3", Residential

#### ***Discussion:***

The relevant zone regulations do not allow for any commercial establishment aside from the office of a resident physician/dentist, drugless practitioner or health professional and a home occupation, provided that the criteria contained in Section 4.1.16 or Section 4.1.17 respectfully, of By-law 0225-2007, as amended, are met. Among other items, one of the criteria in Section 4.1.16 specifies that home occupations are restricted to the following occupations: artist/artisan; music instruction; office (except a resident physician, dentist, drugless practitioner or health professional); and tutoring. Moreover, a home occupation cannot exceed 25% of the gross floor area – residential of the detached dwelling, up to a maximum of 50 m<sup>2</sup> (538.21 sq. ft.), and shall be conducted wholly within the detached dwelling. The requested retail business fails to meet a number of the criteria listed in Section 4.1.16. This Department does not consider this proposal to be a home occupation as contemplated in the Official Plan. Further, the zone regulations do not allow any commercial establishment other than the home occupations indicated above. Therefore, the request does not maintain the general intent and purpose of the By-law and consequently, should not be supported.

### **3.0 OTHER APPLICATIONS**

No other applications are currently in process.

### **4.0 COMMENTS**

In the absence of a Building Permit application for the proposed home occupation, we cannot confirm whether the variances requested are correct and/or whether additional variances will be required. We note that By-law 0225-2007, as amended, does not consider a retail store as a Home Occupation. If the Committee sees merit in this development proposal, the variance should be revised to request that a retail store be considered as a Home Occupation under the zoning By-law. We advise that should the retail store be considered as a Home Occupation, the regulations applicable to Home Occupations under Subsection 4.1.16 shall apply and that additional variances will be required as follows;

1. to permit a Home Occupation in a detached garage; whereas By-law 0225-2007 as amended requires a Home Occupation to be located within a detached dwelling.

We advise that the maximum gross floor area - residential permitted for a Home Occupation is 25% of the gross floor area - residential of the detached dwelling, to a maximum of 50 m<sup>2</sup> (538.21 sq. ft.). We note that the gross floor area proposed for the retail area is 40.6 m<sup>2</sup> (437.09 sq. ft.).

Furthermore, additional information is required with respect to any potential employees of the Home Occupation, whether the detached dwelling on the subject property is the principle private residence of the person(s) conducting the Home Occupation, whether there will be any outdoor storage and the number of persons attending the Home Occupation at one time.

We note that clarification as to the location of the proposed off-site parking has not been provided. A zoning certificate/committee of adjustment application may be required to permit a parking space at the proposed location. The requested variance for 1 parking space should proceed by way of a Payment-in-Lieu (PIL) of Off-Street Parking application, to be considered by City Council.

File: "A" 403/08  
WARD 11

Given the intended use of the property, this Department is of the opinion that the requested variances are not minor in nature nor desirable for the appropriate development of the property. "

The City of Mississauga Transportation and Works Department commented as follows (November 17, 2008):

"Enclosed for Committee's easy reference are some photo's which depict the subject property."

Mr. S. Murphy, husband of the applicant, advised that the proposal has been discussed with the neighbours who have no objection to the application.

An e-mail was received from Ward Councillor Carlson expressing support for the application and noting his comments.

Ms. J. Fung, Planner with the City of Mississauga, attended and provided clarification with respect to the Planning and Building Department comments.

No other persons expressed any interest in the application.

Mrs. Murphy, after hearing the comments of the Committee and Planning and Building Department requested that the application be amended to provide no additional parking on site.


The Committee consented to the request and, after considering the submission put forward by Mrs. Murphy and noting the nature of the operation, is satisfied that the amended request is desirable for the appropriate temporary use of the subject property. The Committee noted that the property is located adjacent to a church and the future Streetsville Business Improvement Area office. The Committee further indicated that the use is similar to those located within the Streetsville community and they believed that, with restrictions on hours of operation and signage, it will have limited impact on the neighbours.

The Committee is satisfied that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained in this instance.

The Committee is of the opinion that the request is minor in nature in this instance.

Accordingly, the Committee resolves to authorize and grant the request to permit a retail store as a home occupation being within the detached garage providing no additional parking; whereas By-law 0225-2007, as amended, does not permit a retail store as a home occupation, requires the home occupation to be located wholly within the detached dwelling and would require one (1) parking space for the home occupation use in this instance.

This decision for a temporary period of five (5) years to expire and terminate on or before December 31, 2013, subject to the following conditions:

- 
- 1) This decision is personal to "Mrs. C. Murphy" and shall be in effect so long as the subject premises are owned and occupied by same.
  - 2) There shall be no retail signage or advertising on the property.
  - 3) The hours of operation shall be restricted to Wednesdays to Fridays from 10:00 a.m. to 2:00 p.m. and Saturdays from 9:00 a.m. to 1:00 p.m..
  - 4) All activities are to be conducted within the garage and no outside storage or display of items for sale is permitted.

MOVED BY: B. Butt

SECONDED BY: G. Maloney

CARRIED

File: "A" 403/08  
WARD 11

Application Approved, temporarily, on conditions as stated.


Dated at the City of Mississauga on November 27, 2008.


THIS DECISION IS SUBJECT TO APPEAL TO THE ONTARIO MUNICIPAL BOARD BY FILING WITH THE SECRETARY-TREASURER OF THE COMMITTEE OF ADJUSTMENT A WRITTEN NOTIFICATION, GIVING REASONS FOR THE APPEAL, ACCOMPANIED WITH THE PRESCRIBED FEE ON OR BEFORE **DECEMBER 17, 2008**.


Date of mailing is December 1, 2008.

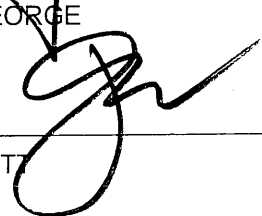
  
S. PATRIZIO (CHAIR)

(DISSENTED)  
R. BENNETT

  
G. MALONEY

  
J. THOMAS

  
D. GEORGE

  
B. BUTT

(ABSENT)  
C.L. VUN

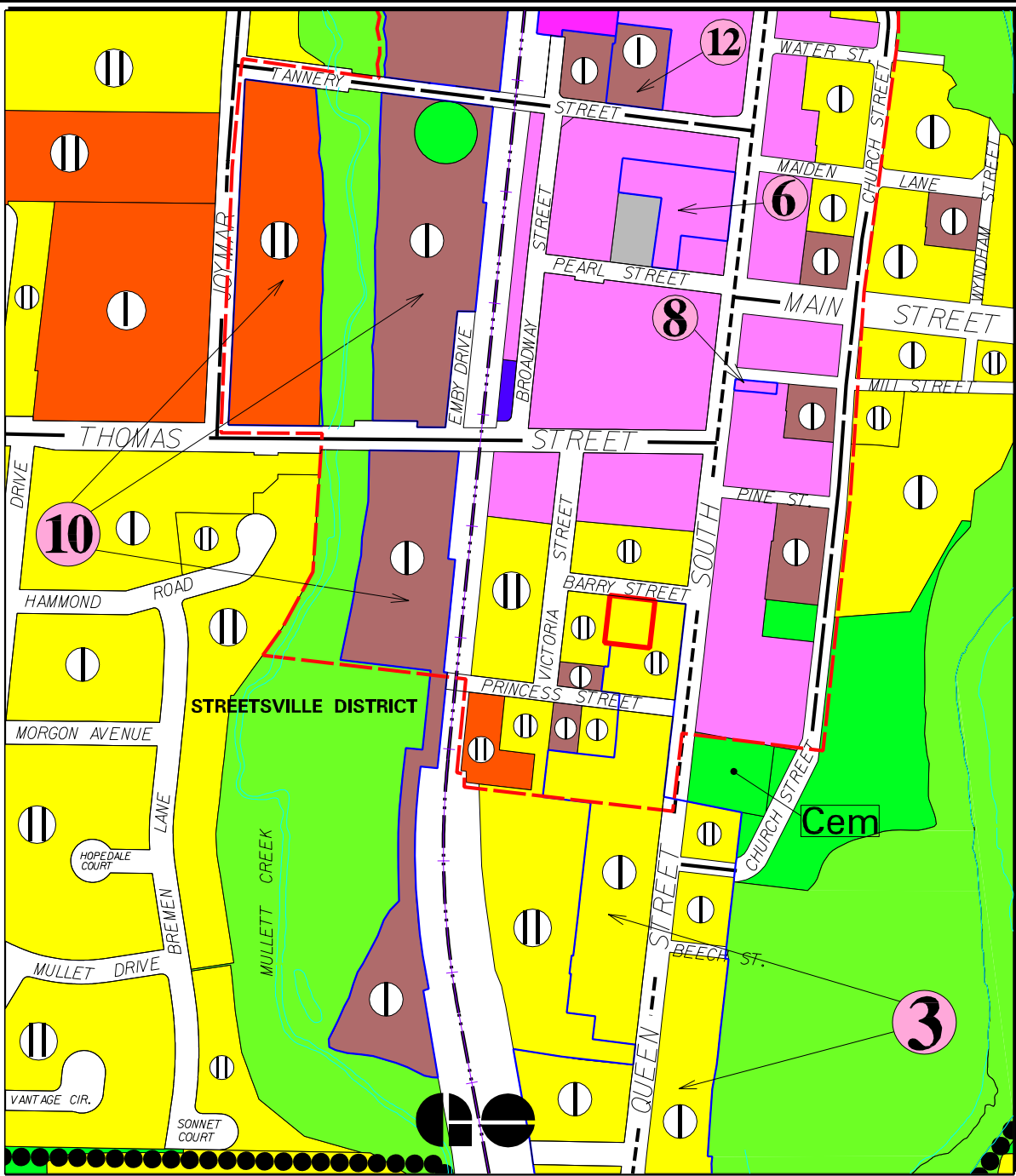
I certify this to be a true copy of the Committee's decision given on November 27, 2008.

  
DAVID L. MARTIN, SECRETARY-TREASURER

A copy of Section 45 of the Planning Act, as amended, is attached.

**NOTES:**

- A Development Charge may be payable prior to the issuance of a Building Permit.
- Further approvals from the City of Mississauga may be required i.e. a Building Permit, a Zoning Certificate, a License, etc.



**PART OF STREETSVILLE DISTRICT LAND USE MAP  
STREETSVILLE DISTRICT POLICIES OF MISSISSAUGA PLAN**

- LAND USE DESIGNATIONS**

  - Residential - Low Density I
  - Residential - Low Density II
  - Residential - Med. Density I
  - Residential - Med. Density II
  - Residential - High Density I
  - Mainstreet Commercial
  - General Commercial
  - Convenience Commercial
  - Motor Vehicle Commercial
  - Business Employment
  - Public Open Space
  - Private Open Space
  - Greenbelt
  - Utility
- TRANSPORTATION LEGEND**

  - Provincial Highway and Interchange
  - Arterial
  - Major Collector
  - Major Collector (Scenic Route)
  - Minor Collector
  - Local Road
  - Existing Commuter Rail
  - GO Transit Station

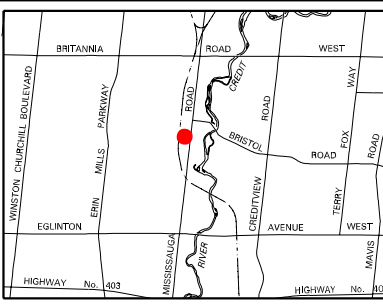
- LAND USE LEGEND**
- LBPIA Operating Area Boundary- See Aircraft Noise Policies
  - Node Boundary
  - Cem - Cemetery
  - 1996 NEP / 2000 NEF Composite Noise Contours
  - Planning District
- Special Site Areas**  
(See Special Site Policies)

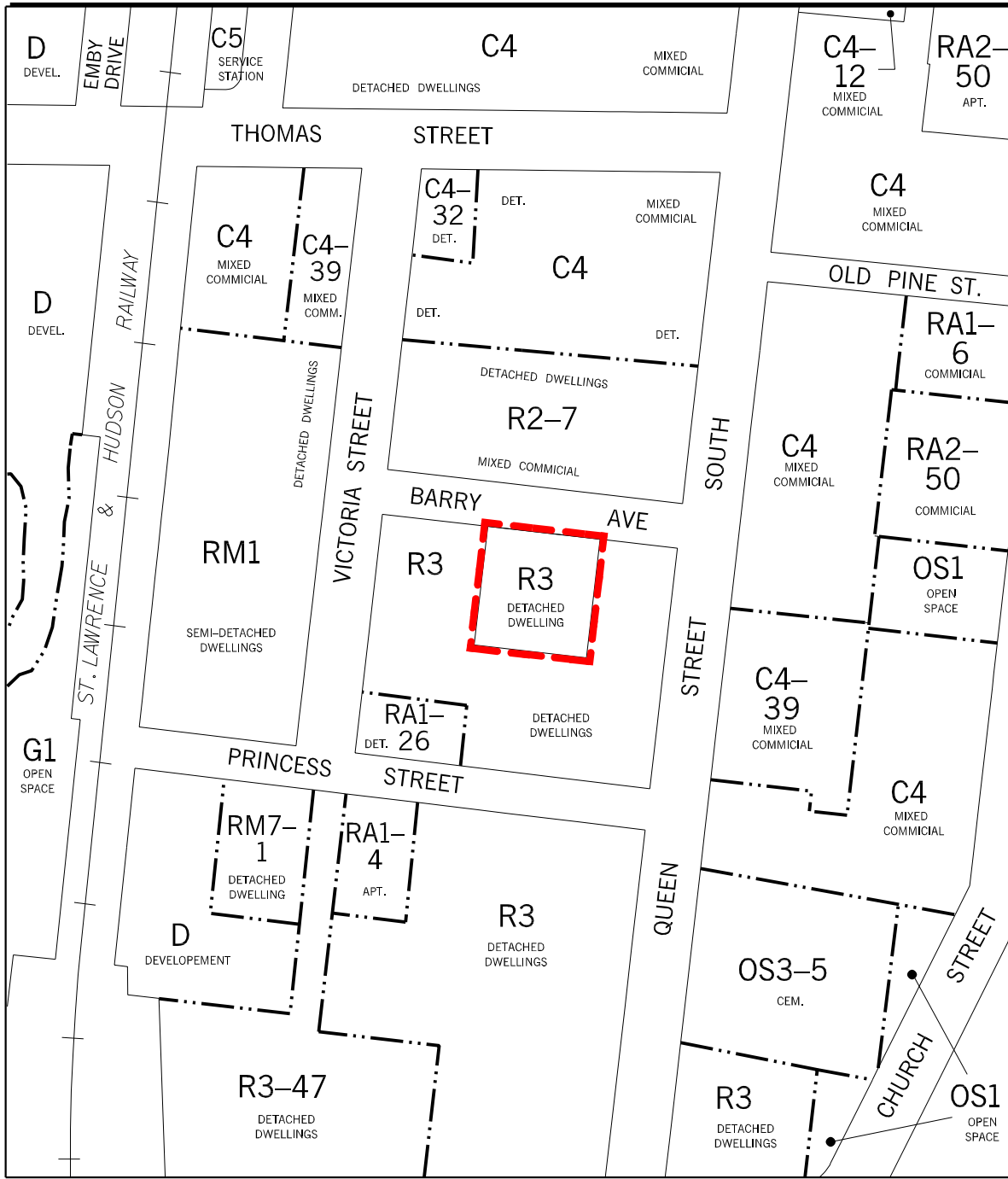
Note:  
The 1996 Noise Exposure Projection (NEP)/2000 Noise Exposure Forecast (NEF) Composite Noise Contours are shown for information purposes only and are not part of the District Land Use Map. These contours will change from time to time as new information becomes available.  
For accurate reference the composite NEP/NEF map produced by Transport Canada at a scale of 1:50 000 should be consulted.

 **SUBJECT LANDS**



**SUBJECT: CHRISTINE MURPHY**

	<b>FILE NO:</b> A' 40308
	<b>DWG. NO:</b> A40308L.DGN
	<b>SCALE:</b> 1:5000
	<b>PDC DATE:</b> 2009/01/12
	<b>DRAWN BY:</b> B. KRUGER



**LEGEND:**

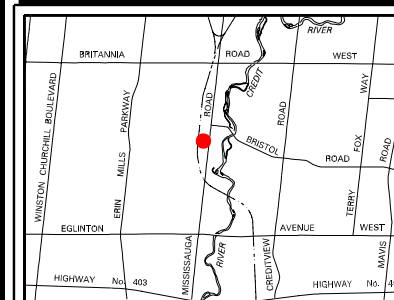


**SUBJECT LANDS**



**SUBJECT:**

**CHRISTINE MURPHY**



**FILE NO:**

**'A' 40308**

**DWG. NO:**

**A40308R.DGN**

**SCALE:**

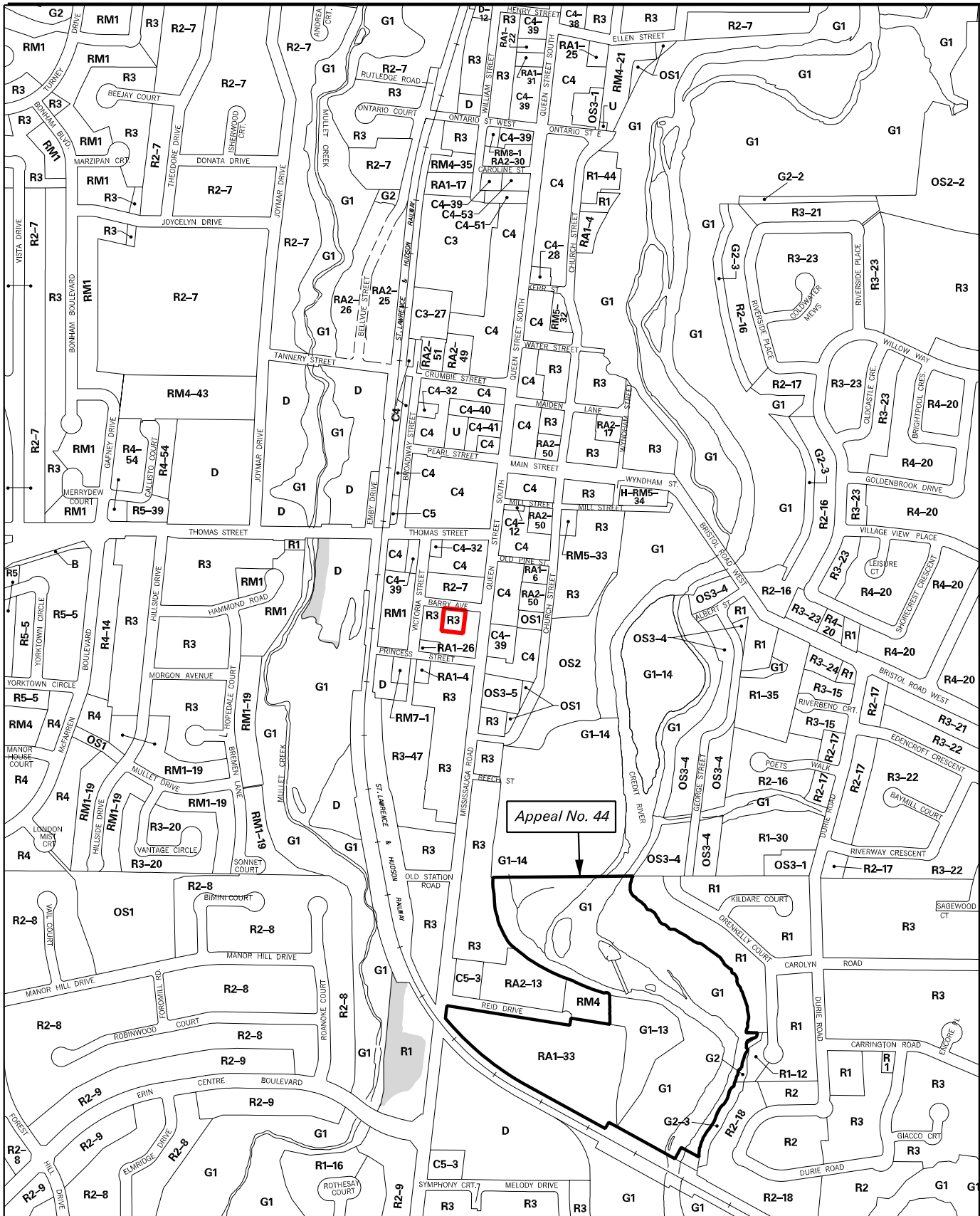
**1:2000**

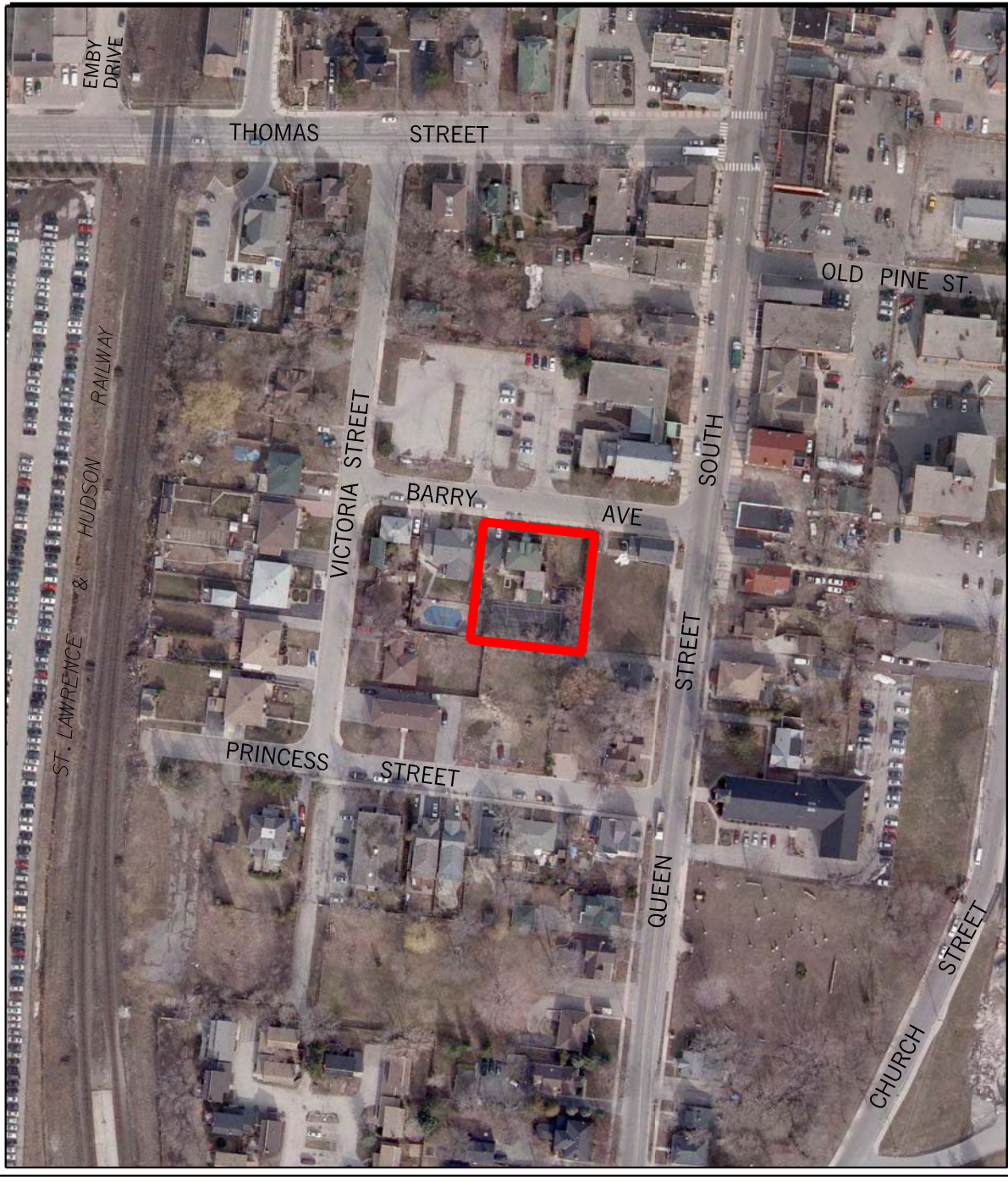
**PDC DATE:**

**2009/01/12**

**DRAWN BY:**

**B. KRUGER**





LEGEND:



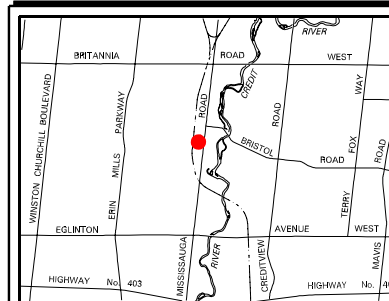
SUBJECT LANDS

DATE OF AERIAL PHOTO: APRIL 2008



SUBJECT:

CHRISTINE MURPHY



FILE NO:

'A' 40308

DWG. NO:

A40308A.DGN

SCALE:

1:2000

PDC DATE:

2009/01/12

DRAWN BY:

B. KRUGER

**MISSISSAUGA**  
Planning and Building

Produced by  
T&W, Geomatics

APPENDIX I-5