TO: Chair and Members  
Economic Development and Planning Committee  
WARD(S) AFFECTED: WARD 7

COMMITTEE DATE: March 23, 2010

SUBJECT/REPORT NO:
Sign Variance Application SV-09-010 for the Property Known as 880 Upper Wentworth Street, Hamilton - Denied by the Director, Planning Division, and Appealed by the Applicant (PED10076) (Ward 7)

SUBMITTED BY:  
Tim McCabe  
General Manager  
Planning and Economic Development Department  
PREPARED BY:  
Jason Thompson  
(905) 546-2424, Ext. 3933

SIGNATURE:

RECOMMENDATION:

That the Appeal of Sign Variance Application SV-09-010, by Bob Doran, on behalf of the National Bank of Canada, to permit a second ground sign located 62 metres from an existing ground sign, for the property located at 880 Upper Wentworth Street (Hamilton), as shown on Appendix “A” to Report PED10076, be DENIED on the following basis:

(a) That the proposed variance does not maintain the general intent and purpose of Sign By-law No. 06-243; and,

(b) That the proposed variance does not have regard for the four tests, as set out in Section 6.5 of By-law No. 06-243.

EXECUTIVE SUMMARY

The applicant submitted Sign Variance Application SV-09-010 to permit a second ground sign located 62 metres from an existing ground sign on the same property,
whereas Sign By-law 06-243 requires that a ground sign be setback 200 metres from an existing ground sign on the same property (see Appendix “B” - 5.2.10).

The proposed ground sign is intended to advertise the National Bank, one of the tenants of the commercial plaza located on the subject property. The proposed sign will have a northerly and southerly face of 1.4 metres wide by 4.3 metres high and an area of 6 square metres (see Appendix “E”).

The Sign Variance Application was denied by the Director, Planning Division, on September 25, 2009. The reason for refusal is that the proposed variance does not maintain the general intent and purpose of the Sign By-law, and does not meet the 4 tests for sign variances provided in Section 6.5. of By-law 06-243 (see Appendix “B”).

Subsequently, the applicant appealed the decision of the Director, Planning Division, and requested that the variance application be brought to the Economic Development and Planning Committee for their review and recommendation.

Alternatives for Consideration - See Page 6.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

Financial: None.

Staffing: None.

Legal: The proposed amendment is under the Municipal Act, and there are no requirements for a Public Meeting. By-law 06-243 requires the City Clerk to notify the applicant once a hearing date before the Economic Development and Planning Committee has been fixed.

**HISTORICAL BACKGROUND**

On August 9, 2006, Council approved Sign By-law 06-243, which provides regulations for varying the Sign By-law. Part 6.0 of By-law 06-243 provides the regulations in dealing with Variances, including the delegated approval authority, what the City of Hamilton shall have regard for when reviewing variance applications, and the process of appealing the variance application decision (see Appendix “B”).

Ground signs are regulated under Section 5.2 of Sign By-law 06-243, which defines a Ground Sign as a “Sign which is free standing and is supported by a structure secured to the ground, and which is not supported by any building or other structure.”
Section 6.3 of By-law 06-243 regulates that variances may be authorized by the Director of Development and Real Estate, now the Director of Planning, or his designate.

Section 6.6 of By-law 06-243 outlines that an applicant may appeal the variance application decision of the Director of Planning to the Economic Development and Planning Committee.

Section 6.8 of By-law 06-243 provides regulations that Council may uphold or vary the recommendations of the Economic Development and Planning Committee, or do any act or make any decision that it might have done had it conducted the hearing itself, and the applicant shall not be entitled to a further hearing on the matter before Council, and the decision of Council shall be final.

On July 7, 2009, staff received the sign variance application to permit a second ground sign located 62 metres from an existing ground sign on the same property, whereas Sign By-law 06-243 requires that a ground sign be setback 200 metres from an existing ground sign on the same property.

Prior to deeming the application complete, staff reviewed the proposal and advised the applicant that the requested variance was not supportable by staff and asked if they still wished to proceed with the proposed variance or not. The applicant advised staff that his client wished to proceed with the application, and on this basis, the application was deemed to be complete on July 27, 2009.

On September 25, 2009, the proposed sign variance application was denied by the Director, Planning Division, and notice sent to the applicant advising him of the decision.

On September 30, 2009, the applicant sent a letter to the Clerk’s Department appealing the decision of the Director, Planning Division, requesting that the proposed sign variance application be placed on the agenda of the next Economic Development and Planning Committee (see Appendix “C”).

Details of Submitted Application

<table>
<thead>
<tr>
<th>Location:</th>
<th>880 Upper Wentworth Street.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner</td>
<td>Barriview Developments Ltd.</td>
</tr>
<tr>
<td>Applicant:</td>
<td>Robert Doran, Robert Doran and Associates.</td>
</tr>
<tr>
<td>Property Description:</td>
<td>Frontage: 73.46m. (approximately)</td>
</tr>
<tr>
<td></td>
<td>Lot Depth: 81.19m. (approximately)</td>
</tr>
<tr>
<td></td>
<td>Area: 0.52 ha. (approximately)</td>
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POLICY IMPLICATIONS

City of Hamilton Sign By-law No. 06-243

By-law No. 06-243 provides regulations for signs and other advertising devices within the City of Hamilton.

Section 5.2.10 requires that where more than one Ground Sign is erected, located, or displayed parallel to a Street Frontage, no Ground Sign shall be erected, located, or displayed within 200.0 metres of another Ground Sign on the same property. The proposed Ground Sign is located 62 metres from an existing Ground Sign, which is 138 metres closer than that permitted by the By-law.

RELEVANT CONSULTATION

- Legal Services Division.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Under the Sign By-law, one ground sign is permitted on each street frontage of a property. For those properties with a large street frontage over 300 metres in length, such as a major shopping centre, more than one ground sign may be appropriate or required. However, when more than one ground sign along a street frontage is proposed, the minimum separation between the ground signs is 200 metres.

The City of Hamilton may approve a Sign Variance application if the general intent and purpose of the By-law is maintained, and the proposal has regard for the four tests, as set out in Section 6.5 of By-law No. 06-243 (see Appendix “B”). Section 5.2.10 seeks to prevent the clustering of ground signs, and thus protect the aesthetic quality and visual character of the neighbourhood. The applicant’s justification for the required variance is that the existing ground sign is not adequate for the existing businesses within the plaza as only 7 of the 9 business have advertising space on the sign, including the National Bank, which leases approximately 25% of the retail plaza (see Appendix “D”).

These four tests are evaluated in the following comments:

a) Special circumstances or conditions applying to the land, building, or use referred to in the application.

The subject property has 78.6 metres of frontage along Upper Wentworth, and thus does not have adequate space in which to provide the required 200 metre setback
from an existing ground sign. The existing sign, which was erected in 1991, provides advertising space for 7 of the 9 tenants of the existing plaza. The applicant, National Bank, has one of the 7 advertising spaces on the existing sign (see Appendix “F”), thus the purpose of the proposed application is to expand the scope of the National Banks advertising. Therefore, there are no special circumstances or conditions that require a second ground sign to be located within the minimum 200 metre setback.

b) Whether strict application of the provisions of this By-law in the context of the special circumstances applying to the land, building, or use, would result in practical difficulties or unnecessary and unusual hardship for the applicant, inconsistent with the general intent and purpose of this By-law.

The National Bank presently has advertising space on the existing ground sign located in the southeast portion of the subject property. If the application is denied, the National Bank will be able to continue to advertise on the existing ground sign, which is adequately visible from Upper Wentworth Street in both directions.

c) Whether such special circumstances or conditions are pre-existing and not created by the Sign Owner or applicant.

The need for the variance is a result of the National Bank of Canada wanting to have greater advertising space than what they are currently provided on the existing Ground Sign. Therefore, it is the opinion of staff that there are no pre-existing special circumstances or conditions to support the proposed variance.

d) Whether the Sign that is the subject of the variance will alter the essential character of the area in which the Sign will be located.

The proposed sign is to be located in the northeast corner of the subject property (see Appendix “D”). The abutting property to the North is a multi-unit residential building, and thus the proposed ground sign would be out of character with the abutting property. Furthermore the proposed sign will be located 69% (138 metres) closer to the existing ground sign than what is permitted in the By-law and, therefore, is less than one-third the required distance. The existing ground sign and the proposed ground sign would have significant street presence and would be visually intrusive. The reduced setback would result in the over intensification of signage on site, and would detract from the aesthetic quality and visual character of the neighbourhood.

Based on the foregoing, the requested variance does not maintain the general intent and purpose of the Sign By-law, and does not have regard for the four tests, as set out in Section 6.5 of By-law No. 06-243. Approval of the appeal would encourage other
similar applications which, if approved, would undermine the purpose and intent of the Sign By-law.

ALTERNATIVES FOR CONSIDERATION:

Option 1

Council may uphold the recommendation of the Director, Planning Division, to refuse the proposed variance as it does not maintain the general intent and purpose of the By-law.

Option 2

Council may vary the recommendation of the Director, Planning Division, to approve the proposed variance, subject to a revised location. However, it is staff’s opinion that this option does not maintain the general intent and purpose of the Sign By-law.

Option 3

Council may deny the recommendation of the Director, Planning Division, and support the proposed variance, as submitted. However, it is staff’s opinion that this option does not maintain the general intent and purpose of the Sign By-law.

CORPORATE STRATEGIC PLAN


Healthy Community

• Plan and manage the built environment.

APPENDICES / SCHEDULES

Appendix “A”: Location Map.
Appendix “B”: Section 6 of Sign By-law 06-243.
Appendix “C”: Appeal Letter.
Appendix “D”: Site Layout.
Appendix “E”: Proposed Ground Sign.
Appendix “F”: Existing Ground Sign.

:JT - Attachs. (6)
5.2 Ground Signs

5.2.1 No Person shall erect, locate, or display a Ground Sign except in accordance with the applicable regulations under Schedule “C”, the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.

5.2.2 No Ground Sign shall be erected, located, or displayed except a Ground Sign embedded in a foundation in the ground to a depth of at least 1.2 metres.

5.2.3 No Ground Sign shall be erected, located, or displayed in a commercial or Industrial Zone without displaying on the top or bottom the municipal address number of the Property on which the Ground Sign is erected, located, or displayed in numerals that are a minimum height of 15.0 centimetres.

5.2.4 No Ground Sign shall be erected, located, or displayed within 15.0 metres of a traffic signal or traffic control device.

5.2.5 No Ground Sign shall be erected, located, or displayed within 1.5 metres or a distance equal to 75% of the Height of the Ground Sign, whichever is greater, from any Property Line.

5.2.6 The maximum total Sign Area for a Ground Sign that is double faced or a multi-faced Sign shall be double the maximum Sign Area permitted for one sign face.

5.2.7 The sign face of a Ground Sign may allocate a maximum 50% of the sign face to a Readograph or Electronic Message Display.

5.2.8 No message displayed on an Electronic Message Display on a Ground Sign shall be displayed for less than three (3) seconds, during which there shall be no movement, or change in colour, or intensity of illumination.

5.2.9 A Ground Sign shall be erected, located, or displayed along the same Street Frontage used to calculate the maximum Sign Area of the Ground Sign.

5.2.10 Where more than one Ground Sign is erected, located, or displayed parallel to a Street Frontage, no Ground Sign shall be erected, located, or displayed within 200.0 metres of another Ground Sign on the same Property.
PART 6.0
VARIANCES

6.1 Any Person may apply for a variance from this By-law or any provision thereof.

6.2 An application for variance shall be made on the form prescribed by the City of Hamilton, and shall be accompanied by the applicable fee, as set out in Schedule “A”.

6.3 Variances may be authorized by the Director of Development and Real Estate or his designate.

6.4 The City of Hamilton may authorize a variance if, in its opinion, the general intent and purpose of the By-law are maintained.

6.5 In considering an application for a variance, the City of Hamilton shall have regard for:

(a) Special circumstances or conditions applying to the land, building, or use referred to in the application;

(b) Whether strict application of the provisions of this By-law in the context of the special circumstances applying to the land, building, or use, would result in practical difficulties or unnecessary and unusual hardship for the applicant, inconsistent with the general intent and purpose of this By-law;

(c) Whether such special circumstances or conditions are pre-existing and not created by the Sign Owner or applicant; and,

(d) Whether the Sign that is the subject of the variance will alter the essential character of the area in which the Sign will be located.

6.6 An applicant may appeal the variance application decision of the Director of Development and Real Estate to the Planning and Economic Development Committee.

6.7 The City Clerk shall notify the applicant once a hearing date before the Planning and Economic Development Committee has been fixed, and if the applicant does not attend at the appointed time and place, the Committee may proceed in the absence of the applicant and the applicant shall not be entitled to further notice in the proceeding.

6.8 Council may uphold or vary the recommendations of the Planning and Economic Development Committee, or do any act or make any decision that it might have done had it conducted the hearing itself, and the applicant shall not be entitled to a further hearing on the matter before Council, and the decision of Council shall be final.
Robert Doran and Associates

City of Hamilton
77 James Street North
Hamilton, Ontario
L8R 2K3

ATTENTION: Alexandra Rawlings
Clerks Department

RE: Sign Variance Application
National Bank
880 Upper Wentworth Street
File: SV-09-010

September 30, 2009

With respect to the subject Sign Variance Application originally filed on July 7, 2009, I respectfully request that this application be placed on the agenda of the next Planning and Economic Development Committee meeting for consideration.

I enclose a copy of the Letter of Rationale for the sign variance.

The following departments/agencies have advised that they have no comments/no objections to the application:

Traffic Engineering and Operations
Building Engineering and Zoning
Community Planning and Design Section (Heritage)
Public Works Department (Forestry and Horticulture Section)
Hamilton Municipal Parking System
Recreation Division - Community Services Dept.
Capital Planning and Implementation -Environmental Planning and Economic Development Department -Development Engineering

Kindly advise as to the scheduling for subject application.

Yours truly,

ROBERT DORAN and Associates

Bob Doran
June 29, 2009

City of Hamilton
77 James Street North Suite 400
Hamilton, ON, L8R 2K3

ATTENTION: Building Services Division
Planning and Economic Development

RE: 880 Upper Wentworth Street
Hamilton Ontario
"National Bank"

LETTER OF RATIONALE FOR SIGN VARIANCE APPLICATION

A sign permit application has been submitted to permit a ground sign with a height of 4.3 metres and a width of 1.43 metre. (see attached drawing) The ground sign is proposed to be located at the south end of the shopping centre property with a proposed setback of 4.8 metres from the property line. The proposed sign will have a sign face (per side) of 2.76 sq metres.

Sign By-law No: 06-243 provides that “where more than one ground sign is located parallel to a street frontage, no ground sign shall be located within 200 metres of another sign on the same property”.

The proposed ground sign is to be located at a distance of 63 metres from an existing ground sign. The existing ground sign is not adequate for the existing businesses as only 7 of the businesses have advertising space on the sign including the National Bank which leases approximately 25% of the retail plaza and is the major tenant.

The addition of a ground sign at the south end of the property will improve visibility of the National Bank premises and will make an additional sign panel available for one of the other 8 tenants.

The ability to display corporate identity in a continuing competitive market place is extremely important.

I respectfully request approval for the installation of the additional ground sign at 880 Upper Wentworth Street.

Yours truly,
ROBERT DORAN and Associates

Bob Doran
Note: The North Arrow is facing South not North.