TO: Chair and Members
Planning Committee

WARD(S) AFFECTED: WARD 1

COMMITTEE DATE: June 21, 2011

SUBJECT/REPORT NO:
Sign Variance Application SV-11-001 for the Property Known as 356-358 Main Street West, Hamilton - Denied by the Director, Planning Division, and Appealed by the Applicant (PED11111) (Ward 1)

SUBMITTED BY:
Tim McCabe
General Manager
Planning and Economic Development Department

PREPARED BY:
Daniel Barnett
(905) 546-2424, Ext. 4445

SIGNATURE:

RECOMMENDATION:
That the Appeal of Sign Variance Application SV-11-001, by Sid Catalano, on behalf of Pattison Outdoor Advertising, to replace the existing rooftop billboard sign from a static one-sided sign to a one-sided rooftop electronic billboard sign for the property located at 356-358 Main Street (Hamilton), as shown on Appendix “A” to Report PED11111, be DENIED on the following basis:

(a) That the proposed variance does not maintain the general intent and purpose of Sign By-law No. 10-197.

(b) That the proposed variance does not have regard for the four tests, as set out in Section 6.5 of By-law No. 10-197.

(c) That approval of the appeal could encourage other similar applications which, if approved, would undermine the purpose and intent of the Sign By-law.
SUBJECT: Sign Variance Application SV-11-001 for the Property Known as 356-358 Main Street West, Hamilton - Denied by the Director, Planning Division, and Appealed by the Applicant (PED11111) (Ward 1) - Page 2 of 7

EXECUTIVE SUMMARY

The applicant submitted Sign Variance Application SV-11-001 to replace the existing rooftop billboard sign with a rooftop electronic billboard sign, whereas Sign By-law 10-197 prohibits a rooftop sign supported entirely or partly by the roof of a building or structure and which projects above the roof, and prohibits any sign with a video screen or any flashing, kinetic, or illusionary motion, except an electronic message display, as permitted under the By-law (see Appendix “B” - Sections 5.1.1 a) and b)).

The proposed rooftop electronic billboard sign is intended to display multiple advertisements. The proposed rooftop electronic billboard sign will project 5.8m above the roof of the existing building on site, and will have a sign face of 6.2m wide by 3m high (see Appendices “C” and “F”).

The Sign Variance Application was denied by the Director, Planning Division, on April 5, 2011. The reasons for refusal were that the proposed variance did not maintain the general intent and purpose of the Sign By-law and did not meet the 4 tests for sign variances provided in Section 6.5. of By-law 10-197 (see Appendix “B”).

Pursuant to Section 6.6 of the Sign By-law, the applicant has appealed the decision of the Director, Planning Division, and has requested that the variance application be brought to the Planning Committee for their review (see Appendix “D”).

Alternatives for Consideration - See Page 7.

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 10-197 requires the City Clerk to notify the applicant once a hearing date before the Planning Committee has been fixed.

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honest, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
HISTORICAL BACKGROUND

On August 12, 2010, Council approved Sign By-law 10-197. Part 6.0 of By-law 10-197 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”).

Billboard signs are regulated under Section 5.10 of Sign By-law 10-197, which defines a Billboard sign as a “Sign that is free standing and is supported by a structure secured to the ground and which is not supported by any building or other structure, displays copy advertising goods, products, or services not sold or offered on the property where the sign is displayed.” (See Appendix “B”).

Section 6.3 of By-law 10-197 authorizes the Director of Development and Real Estate, now the Director of Planning, or his designate, to approve variances to the sign By-law.

Pursuant to Section 6.6 of By-law 10-197, an applicant may appeal the variance application decision of the Director of Planning to the Economic Development and Planning Committee. In this regard, Section 6.8 of By-law 10-197 states “Council may uphold or vary the recommendations of the 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 January 10, 2011, staff received an application for a sign variance to permit the replacement of an existing rooftop billboard sign with a rooftop electronic billboard sign, whereas the provisions of Sign By-law 10-197 prohibit any sign with a video screen or any flashing, kinetic, or illusionary motion, except an electronic message display. Furthermore, the Sign By-law prohibits any sign supported entirely or partly by the roof of a building or structure and which projects above the roof.

Prior to submission of the application for a sign variance, the applicant met with staff. Staff reviewed the proposal and advised the applicant that the proposed variances were not supportable by staff. Regardless, the applicant elected to proceed with the application.

On April 5, 2011, the proposed sign variance application was denied by the Director, Planning Division, and notice was sent to the applicant advising them of the decision.
On April 26, 2011, the applicant sent an e-mail to Planning staff appealing the decision of the Director, Planning Division, requesting that the proposed sign variance application be placed on the agenda of the next Planning Committee (see Appendix “D”).

**Details of Submitted Application**

**Location:** 356-358 Main Street West (Hamilton)  
**Owner:** Pattison Outdoor Advertising  
**Applicant:** Sid Catalano, Pattison Outdoor Advertising

**Property Description:**  
Frontage: 10m. (Approximately)  
Lot Depth: 30m. (Irregular) (Approximately)  
Area: 383 sq. m. (Approximately)

**POLICY IMPLICATIONS**

**City of Hamilton Sign By-law No. 10-197**

By-law No. 10-197 provides regulations for signs and other advertising devices within the City of Hamilton.

Section 5.1.1 specifies which signs are not to be displayed or permitted. Section 5.1.1 a) prohibits any sign with a video screen, and Section 5.1.1 prohibits any sign supported entirely or partly by the roof of a building or structure and which projects above the roof (see Appendix “B”). The proposed billboard sign is located on top of the roof of an existing building and will display advertisements on a video screen, both of which are prohibited by the By-law.

**RELEVANT CONSULTATION**

- Legal Services Division.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

Under Section 3.4 of the Sign By-law, any sign that is lawfully displayed on the day the By-law came into force may continue to be displayed provided it is not substantially altered in a manner that would bring it into non-compliance or increase its non-compliance with the By-law (see Appendix “B”). The existing sign is non-conforming, in that the existing sign is a rooftop sign, which is a prohibited sign within the By-law, whereas the sign was legally established prior to the adoption of the
Sign By-law (see Appendix “E”). The proposed alteration will increase the non-compliance of the existing sign by converting the billboard to a video screen (see Appendix “F”).

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. 10-197 (see Appendix “B”). Section 3.4 permits an existing sign to remain, but prohibits any increase in the non-conformity of any existing sign. Ultimately, the intention is for existing non-conforming signs to disappear over time and/or be brought more into conformity with the Sign By-law. Section 5.1.1 seeks to prohibit certain types of signs which detract from the street façade and character of the area, as well as signs that can cause a visual distraction for drivers, and potentially cause a traffic safety issue. The applicant’s justification for the required variance is that the proposed rooftop electronic billboard sign will increase the number of advertisements that can be displayed, and that the short term static nature of the advertisements being displayed will not cause a visual distraction. However, staff is of the opinion that the switch between advertisements will cause a visual distraction, there is no mechanism in the By-law to regulate the timing and frequency of the rate at which the sign face changes, and the proposal will bring the existing sign further into non-conformity with the Sign By-law rather than more into conformity with the Sign By-law.

Pursuant to Section 6.5 of the City of Hamilton Sign By-law, in considering applications for sign variance, the following shall be considered:

- **Special circumstances or conditions applying to the land, building, or use referred to in the application.**

- **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.**

- **Whether such special circumstances or conditions are pre-existing and not created by the Sign owner or applicant.**

- **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.**

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 an existing rooftop billboard sign and the proposal is to replace it with a new rooftop electronic billboard sign in order to increase the usability of the sign by increasing the number of advertisements the sign can display. There are no special circumstances or conditions that require the existing rooftop billboard sign to be replaced by a rooftop electronic billboard sign.

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.

As the proposed variance is to replace an existing billboard sign with a rooftop electronic billboard sign for the purpose of increasing the number of advertisements the sign can display, no practical difficulties would be imposed. Furthermore, if the application is denied, the applicant will be able to continue to utilize the existing static rooftop billboard sign and, therefore, there will be no unusual hardship imposed on the applicant.

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

There are no pre-existing special circumstances or conditions. The need for a variance is because the applicant wishes to replace the static rooftop billboard sign with a non-static rooftop electronic billboard sign for the purpose of increasing the number of advertisements the billboard can display. There are no special circumstances or conditions that are pre-existing, and the proposed variances are created by the sign owner and applicant.

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 on a rooftop along a major arterial road (Main Street West) that leads into Downtown Hamilton. The existing rooftop sign is not in keeping with the character of the area, and the proposed replacement of the sign to a rooftop electronic billboard sign would further entrench the sign that is not in character with the area.

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 4 tests, as set out in Section 6.5 of By-law No. 10-197. Approval of the appeal could 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 restriction on the size of the sign and/or any other conditions or restrictions. 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”: Sections 3.4, 5.1, 5.10, and 6.0 of Sign By-law 10-197
Appendix “C”: Site Layout
Appendix “D”: Appeal Letter
Appendix “E”: Existing rooftop Billboard Sign
Appendix “F”: Proposed Rooftop Electronic Billboard Sign

:DB
Attachs. (6)
3.4 **Existing Signs**

Any sign that is lawfully displayed on the day this By-law comes into force may continue to be displayed provided it is not substantially altered in a manner that would bring it into non-compliance or increase its non-compliance with this By-law. Anything done to preserve the condition of a sign or to prevent the deterioration of a sign, including the restoration of a sign by removing or replacing worn out, missing, damaged, or broken parts, or a change in the message or copy displayed by the sign does not in itself constitute a substantial alteration.

5.1 **Prohibited Signs**

5.1.1 No person shall display, or permit to be displayed:

a) any sign with a video screen or flashing, kinetic, or illusionary motion except an electronic message display as permitted under this By-law;

b) any sign supported entirely or partly by the roof of a building or structure and which projects above the roof;

c) any sign displayed within a visibility triangle;

d) any sign displayed on a vehicle, trailer, or truck which is parked or located on property in a manner that is unrelated to its normal use as a vehicle and is more consistent with the use of the vehicle as a sign;

e) any sign which obstructs or is displayed in a parking space required under the City’s Zoning By-law; or,

f) any sign within 400m of the right of way of Highway 403, the Queen Elizabeth Way, the Lincoln M. Alexander Parkway, or the Red Hill Valley Parkway.

5.1.2 Where a sign is not expressly permitted by this By-law, it shall be deemed to be prohibited.

5.10 **Billboard Signs**

5.10.1 No Person shall display or permit to be displayed a Billboard except in accordance with the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.
5.10.2 No Billboard shall be displayed except in accordance with the following regulations:

**permit**

a) obtain a permit under this By-law;

**structure**

b) maximum sign area of 18 sq. m;

c) maximum height of 12m and maximum width of 4m;

**content**

d) non animated, except a Tri-vision Billboard;

e) may allocate a maximum 50% of the sign face to a readograph;

**location**

f) not on a property within the Downtown Community Improvement Project Area, the Waterdown Urban Area, or the Waterdown Settlement Area;

 g) not less than 300m from another Billboard;

 h) not less than 300m from any residentially zoned property;

 i) not less than 15m from any property line;

 j) on vacant, undeveloped property zoned commercial or industrial;

5.10.3 Where a property on which a Billboard is displayed ceases to be vacant or undeveloped, the sign owner shall remove the Billboard from the 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.
Barnett, Daniel

From: Sid Catalano [scatalano@pattisonoutdoor.com]
Sent: Tuesday, April 26, 2011 1:47 PM
To: Barnett, Daniel
Cc: Mallard, Paul; Lampman, Lonnie

Subject: Appeal of 355-358 Main Street

Please be advised that Pattison Outdoor Advertising will be submitting an application to appeal the decision to the letter dated April 5, 2011. It is my understanding that there is a 21 day window to appeal. By way of my email I am expressing our intent to appeal the decision.

However we are in the midst of an office move culminating in new premises by May 2, 2011, my records are all packaged and my intentions are to submit a formal appeal in the next 14 days.

What need to know is what is required for the submission of an appeal.

Sid Catalano
Dir. of Legislation

Pattison Outdoor Advertising
2255 Wyecrest Road
Oakville, On L6L, 3L7
Tel: (905) 465-0114
Fax: (905) 465-0633
scatalano@pattisonoutdoor
EXISTING 10' x 20' STATIC POSTER ROOF SIGN