That approval be given to Zoning Application ZAR-11-041, by 1794698 Ontario Inc., Owner, for a further modification to the “H/S-1409a” (Community Shopping and Commercial, etc.) District, Modified, to additionally permit a restaurant use in the existing commercial building, on the lands located at 649 Upper James Street (Hamilton), as shown on Appendix “A” to Report PED11185, on the following basis:

(a) That the draft By-law, attached as Appendix “C” to Report PED11185, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

(b) That the proposal is consistent with the Provincial Policy Statement and conforms to the Places to Grow Plan.

(c) That the proposed change in zoning is in conformity with the Hamilton-Wentworth Official Plan, the City of Hamilton Official Plan, and the Urban Hamilton Official Plan.
EXECUTIVE SUMMARY

The lands subject to this application consist of a 0.125 hectare parcel located at the northeast corner of the intersection of Upper James Street and Fennell Avenue (see Appendix "A"). The property contains an existing commercial building currently occupied by Public Mobile and Anytime Convenience. A third commercial unit is currently vacant.

The purpose of this application is to further modify the Community Shopping and Commercial “H/S-1409a” Zone that applies to the subject property, to include a restaurant as a permitted use, so that the third commercial unit may be occupied by a 9 seat, 86 square metre, “Pita Pit” restaurant.

Planning staff is satisfied that the proposal has merit and can be supported as it is consistent with the Provincial Policy Statement, conforms with the Hamilton-Wentworth Official Plan, the City of Hamilton Official Plan, and the Urban Hamilton Official Plan. The proposed development is also compatible with existing and planned development in the surrounding area.

The implementing Zoning By-law Amendment, attached as Schedule “C”, includes provisions to ensure that the restaurant use does not exceed 9 seats or 93 square metres.

Alternatives for Consideration - See Page 10.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: N/A.

Staffing: N/A.

Legal: As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for an Amendment to the Zoning By-law.

HISTORICAL BACKGROUND (Chronology of events)

Proposal

The 0.125 hectare parcel of land subject to this application contains an existing commercial building with a footprint of approximately 315.86 square metres, as shown on Appendix “B”. A cell phone retail store (Public Mobile) and a convenience store (Anytime Convenience) occupy two of the three commercial units within the building.
Through this application, the owners are proposing to further modify the “H/S-1409a” zoning regulations that apply to the property to add a restaurant as a permitted use so that the third unit may be occupied by a restaurant (Pita Pit).

Chronology:

- **October 20, 1998 and May 30, 2000:** By-laws 98-263 and 00-087, respectively, were passed by the City of Hamilton to rezone the property from, the “E” (Multiple Dwelling, Lodges, Clubs, etc.) District to the “H/S-1409a” (Community Shopping and Commercial, etc.) District, Modified, in order to permit the broad range of commercial uses permitted within the “H” District, excluding a restaurant.

- **July 27, 2011:** Submission of Application ZAR-11-041 by 1794698 Ontario Inc.

- **August 12, 2011:** Application ZAR-11-041 is deemed complete.

- **August 22, 2011:** Circulation of Notice of Complete Application and Preliminary Circulation for Application ZAR-11-041 to all residents within 120 metres of the subject lands.

- **October 21, 2011:** Circulation of Notice of Public Meeting to all residents within 120 metres of the subject lands.

Details of Submitted Application:

**Location:**
649 Upper James Street (Hamilton) (see Appendix “A”)

**Owner:**
1794698 Ontario Inc.

**Agent:**
A. J. Clarke and Associates

**Property Description:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Measurements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Lot Frontage</td>
<td>28.4 metres onto Upper James Street</td>
</tr>
<tr>
<td></td>
<td>44.8 metres onto Fennell Avenue</td>
</tr>
<tr>
<td>Lot Depth</td>
<td>48.77 metres</td>
</tr>
<tr>
<td>Total Lot Area</td>
<td>0.125 hectares</td>
</tr>
</tbody>
</table>
EXISTING LAND USE AND ZONING:

<table>
<thead>
<tr>
<th>Subject Lands:</th>
<th>Existing Land Use</th>
<th>Existing Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Lands:</td>
<td>Commercial Plaza</td>
<td>Community Shopping and Commercial “H/1409a” Zone, Modified</td>
</tr>
</tbody>
</table>

Surrounding Lands:

<table>
<thead>
<tr>
<th>North</th>
<th>Variety of Commercial Uses</th>
<th>“H”(Community Shopping and Commercial) District</th>
</tr>
</thead>
<tbody>
<tr>
<td>South</td>
<td>Variety of Commercial Uses</td>
<td>“G-1” (Designed Shopping Centre) District and “G-1/S-286” (Designed Shopping Centre) District, Modified</td>
</tr>
<tr>
<td>East</td>
<td>Residential Apartment Building</td>
<td>“E” (Multiple Dwellings, Lodges, Clubs, Etc.) District</td>
</tr>
<tr>
<td>West</td>
<td>Variety of Commercial Uses</td>
<td>“H”(Community Shopping and Commercial) District</td>
</tr>
</tbody>
</table>

POLICY IMPLICATIONS

Provincial Policy Statement:

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff recognizes that the application is consistent with the policies that focus growth in Settlement Areas, Policy 1.1.3.1.

Growth Plan for the Greater Golden Horseshoe (Places to Grow):

Section 1.2.2 of the Growth Plan for the Greater Golden Horseshoe 2006 indicates that some of the guiding principles of the Plan are to “build compact, vibrant, and complete communities”, and to “optimize the use of existing and new infrastructure to support growth in a compact, efficient form”. The application is consistent with these principles, as it proposes to build a more compact community by allowing a range of uses that will maximize the development potential of the site.

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
Hamilton-Wentworth Official Plan:

The subject property is designated as “Urban Area” within the Hamilton-Wentworth Official Plan (HWOP). Policy C-3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. The proposed use complies with the “Urban Area” Hamilton-Wentworth Official Plan.

City of Hamilton Official Plan:

The subject lands are designated “Commercial” on Schedule “A” of the City of Hamilton Official Plan. The general intent of the policies of the “Commercial” designation is to ensure that commercial development occurs “in an orderly manner, consistent with the needs of the community” in order to “best serve the residents of the City, and to recognize and accommodate the locational, trade area or special requirements of businesses of varying size and function”.

Given the location of the “Commercial” designation at the intersection of Upper James Street and Fennell Avenue (both of which are arterial roads), the subject lands are also considered “Extended” or “Ribbon” Commercial. As such, the following policies apply:

“2.2.14 The EXTENDED COMMERCIAL category applies to existing stretches of individually managed Commercial establishments located along Arterial Roads, serving both pedestrian and automobile borne trade. It consists of:

i) "Ribbon" Commercial uses on smaller lots serving predominantly residents and pedestrians in the vicinity, with some specialized Commercial uses attracting automobile borne traffic from beyond the local area”.

It is in the context of this Official Plan policy environment that the subject lands and surrounding lands along Upper James Street and Fennell Avenue have been predominantly zoned “H” (Community Shopping Centre, Etc.) and G-1” (Designed Shopping Centre) Zones, as these zones permit a wide range of retail commercial uses, including restaurants. Planning staff is of the opinion that rezoning the subject lands to similarly permit a 9 seat, 93 square metre restaurant, in addition to the current range of uses permitted on the subject property, conforms with the “Commercial” policies of the City of Hamilton Official Plan.

New Urban Official Plan:

The Urban Hamilton Official Plan was adopted by Council on July 9, 2009, with the Ministry of Municipal Affairs and Housing issuing its Ministerial Approval on March 16, 2011. However, the Plan has been appealed to the Ontario Municipal Board in its entirety and is, therefore, not yet in effect.
The subject lands are designated “Primary Corridor” and “District Commercial” on Schedule “E” - Urban Structure and Schedule “E-1” - Land Use Designation, respectively, in the Urban Hamilton Official Plan.

According to Sub-section 2.4.6, “Urban Corridors”, such as the Primary Corridor applicable to the subject lands, “shall function as commercial spines providing retail stores and commercial services that cater primarily to the weekly and daily needs of residents within the surrounding neighbourhoods”. In addition, “small scale retail stores that cater to a broader regional market may also be permitted”.

According to Sub-section 7.7.2, the range of uses permitted in the “District Commercial” designation includes:

“a) *Commercial uses including retail stores, personal services, financial establishments, live work units, restaurants, including gas bars, car washes, and service stations;*

b) *Offices, provided they are located above the first storey;*

c) *Residential uses, provided they are located above the first storey of a mixed-use building; and,*

d) *Accessory uses.*”

As a restaurant is considered an appropriate use within the “District Commercial” designation, Planning staff is satisfied that permitting a 9 seat, 93 square metre restaurant use on the subject lands is compliant with the land use policies of the Urban Hamilton Official Plan.

### RELEVANT CONSULTATION

The following Departments and Agencies had no comments or objections:

- Waste Management Division, Public Works Department.
- Traffic Engineering Section, Public Works Department.
- Forestry and Horticulture Section, Public Works Department.
- Hamilton Municipal Parking System Section, Parking and By-law Services Division.
- Development Engineering Section, Growth Management Division.
- Hamilton Street Railway.
Public Consultation

In accordance with the Bill 51 changes to the Planning Act and Council’s Public Participation Policy, a first Notice of Complete Application and Preliminary Circulation of the applications was circulated to 574 residents and property owners within 120 metres of the subject property on August 22, 2011. A Public Notice Sign was also posted on the subject lands at that time. To date, no objections have been received from neighbouring residents or property owners as a result of the preliminary circulation and notice.

Notice of the Public Meeting was given in accordance with the requirements of the Planning Act.

ANALYSIS / RATIONALE FOR RECOMMENDATION
(include Performance Measurement/Benchmarking Data, if applicable)

1. The proposal has merit and can be supported for the following reasons:
   
   (i) It is consistent with the Provincial Policy Statement and the Places to Grow Growth Plan;
   
   (ii) It conforms to the Hamilton-Wentworth Official Plan, the City of Hamilton Official Plan, and the New Urban Hamilton Official Plan; and,
   
   (iii) It is compatible with existing development in the surrounding area.

2. The existing building, currently occupied by a convenience store and cell phone retail establishment, was constructed following the completion of a Zoning By-law Amendment that rezoned the property to the “H/S-1409a” (Community Shopping Centre, Etc.) Zone. The zoning regulations applicable to the property permit the broad range of commercial uses permitted in the “H” (Community Shopping Centre, Etc.) Zone (including all forms of retail, offices, and personal services), but specifically excludes restaurants (a use typically permitted as-of-right in the “H” Zone).

   In 1998, at the time of the Zoning By-law Amendment that rezoned the property to “H/S-1409” (Community Shopping Centre, Etc.), the original owners had only intended to use the building as a convenience store. As they had no residential tenants in mind, they simply removed the restaurant use from the list of permitted uses being sought in order that the site could be developed to the less stringent performance standards relating to the location of parking lots.
The original owners have since sold the property. The current owners are now seeking to revise the provisions to the site-specific Zoning By-law in order that a 9 seat, 86 sq.m. restaurant may be permitted.

3. As noted earlier in this Report, the subject lands are designated “Extended Commercial” in the former City of Hamilton Official Plan, and “District Commercial” in the new City of Hamilton Official Plan. The policies for both of these designations permit a range of commercial uses, including restaurants. In fact, other properties within the area that similarly fall within the same Official Plan designations currently have restaurant uses permitted as-of-right, including the property to the immediate north on which a take-out restaurant is currently operating. Therefore, Planning staff is of the opinion that it is reasonable to provide zoning provisions allowing restaurants on lands within this Official Plan designation.

4. Aside from the general policies acknowledging that, among other uses, restaurants may reasonably be located on lands designated “Extended Commercial” or “District Commercial”, consideration must also be given to whether a restaurant use may reasonably be located on the subject property given its unique size, shape, and location. In this regard, Planning staff notes that the subject land is already occupied by a commercial plaza, which has leaseable space available that could otherwise be used for a range of other commercial uses. This commercial plaza was built following the review and approval of a site plan application that has addressed, among other things, adequate setbacks, landscaping, parking areas, and vehicular access points.

The existing commercial plaza can provide sufficient parking to comply with the minimum parking standards of the Zoning By-law, and has points of ingress and egress that are acceptable to the City’s Traffic Engineering Section. Further, staff is satisfied that the existing built form and range of uses will continue to be compatible with surrounding land uses, including the existing commercial uses to the north, south, and west, as well as the residential apartment building to the east.

Given the foregoing, Planning staff is satisfied that the subject lands may reasonably be used for a restaurant.

5. The draft amending Zoning By-law, attached as Appendix “C”, provides regulations, as Item 2(a), to reinstate a restaurant use as a standard permitted use within the “H” (Community and Shopping Centre, Etc.) District. Item 2(b) also limits the size of a restaurant use to 9 seats and 93 sq.m.
In addition, a number of special provisions have been included to recognize the site-specific characteristics of the subject lands. The as-built building location plan deposited with the Building Services Division indicates that the existing building, which was built following the approval of Site Plan DA-99-24, was constructed 2.8 metres from the front lot line, rather than 3.0 metres, as required by the Zoning By-law. As such, Item 2(c) of the draft Zoning By-law includes a provision to acknowledge this revised setback.

6. In all other respects, the subject lands complied with the provisions of the Zoning By-law in terms of uses, building setbacks, and location of parking / manoeuvring / access points for the existing commercial uses.

However, standard provisions within the By-law require substantial alternative locational requirements for parking lots, manoeuvring areas, access points, and landscaping associated with restaurants (i.e. driveway/parking/manoeuvring areas and access points are required to be setback 12.0 metres and 30 metres, respectively, from a residential district). These standard provisions related to the location of driveways, parking lots, and access points servicing restaurants are included within the By-law to assist in ensuring that restaurants remain compatible with adjacent residential uses. More particularly, the provisions ensure that new restaurants, with a likelihood of generating nuisance complaints such as drive-thrus or licensed establishments, have substantial setbacks for the associated parking lots to provide a buffer from the amenity areas of abutting residential uses. Items 2(d)-(f) of the draft Zoning By-law relieves the subject property and the proposed restaurant from having to comply with these substantial setbacks and landscaping requirements and, in turn, sets the existing conditions as the new regulation standards.

Planning staff is satisfied that these site-specific special provisions to recognize the characteristics of the existing parking lot are reasonable in this case. By placing regulations limiting the size of the proposed restaurant to a maximum of 9 seats and 93 sq.m. within the commercial plaza, it will not be of the scale or type of establishment that the original provisions of the By-law were intended to regulate for the sake of ensuring compatibility with abutting residential uses. In addition, as the residential use on the abutting property is a 15-storey apartment building, having its entrance road and parking lot abutting the shared property line, there is no private amenity area that will be compromised.

There are no plans for any further construction on the property that will result in any further streetscape, massing, or visual obstruction issues. Further, the restaurant will be only one use within the commercial plaza, and the vehicular traffic generated by the restaurant will be indistinguishable from other vehicular trips patronizing the other uses on site.
7. In conclusion, Planning staff is of the opinion that the subject application to add a restaurant to the list of uses permitted on the subject lands and within the existing commercial plaza complies with all relevant planning policy, is appropriate for the subject lands, and is compatible with the surrounding community.

**ALTERNATIVES FOR CONSIDERATION:**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Should the proposed Zoning By-law Amendment applications be denied, the existing property would remain zoned “H/S-1409a”, which would allow the existing building to be occupied by a broad range of commercial and retail uses, save and except for a restaurant.

**CORPORATE STRATEGIC PLAN**  (Linkage to Desired End Results)


**Financial Sustainability**

- Effective and sustainable Growth Management.
- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative, and cost-effective manner.

**Growing Our Economy**

- Newly created or revitalized employment sites.
- Competitive business environment.

**Social Development**

- Hamilton residents are optimally employed earning a living wage.

**Environmental Stewardship**

- Natural resources are protected and enhanced.
- Reduced impact of City activities on the environment.

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
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

Healthy Community

- Plan and manage the built environment.

APPENDICES / SCHEDULES

- Appendix “A”: Location Map
- Appendix “B”: Site Plan of Existing Building and Parking Lot
- Appendix “C”: Draft Zoning By-law Amendment

:CB
Attachs. (3)
CITY OF HAMILTON

BY-LAW NO. [Blank]

To Amend Zoning By-law No. 6593 (Hamilton), as Amended, Respecting Lands Located at 649 Upper James Street (Hamilton)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. C. did incorporate, as of January 1st, 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 "The Corporation of the City of Hamilton" and is the successor to the former regional municipality, namely, “The Regional Municipality of Hamilton-Wentworth”;

AND WHEREAS the City of Hamilton Act, 1999 provides that the Zoning By-laws 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. 6593 (Hamilton) was enacted on the 25th day of July 1950, which By-law was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951, (File No. P.F.C. 3821);

AND WHEREAS the Council of the City of Hamilton, in adopting Item [Blank] of Report 11-[Blank] of the Planning Committee, at its meeting held on the [Blank] day of [Blank], 2011, recommended that Zoning By-law No. 6593 (Hamilton) be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton, (the Official Plan of the former City of Hamilton).
NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Map E7 of the District Maps, appended to and forming part of Zoning By-law No. 6593 (Hamilton), as amended, is hereby further amended as follows:

   (a) By changing the zoning from the “H/S-1409a” (Community Shopping and Commercial, etc.) District, Modified, to the “H/S-1409b” (Community Shopping and Commercial, etc.) District, Modified, for the lands comprised of the subject lands.

2. That the “H” (Community Shopping and Commercial, etc.) District regulations, as contained in Section 14 of Zoning By-law No. 6593, and the modifications contained in the “H/S-1409” and “H/S-1409a” Districts be further modified to include the following special requirements:

   (a) That notwithstanding the provisions Section 4(a) of By-law 98-263, the prohibition of a restaurant use is repealed such that all uses permitted in Section 14(1) shall be permitted on the subject lands.

   (b) That notwithstanding the provisions of Section 14(1), a restaurant use shall have a maximum floor area of 93 sq.m. and a maximum of 9 seats.

   (c) That notwithstanding Section 14.(3)(i), a front yard of a depth of at least 2.8 metres shall be provided and maintained.

   (d) That notwithstanding Sections 14.(9)(i) and 18(12), the following provisions shall apply:

      i) That no planting strip is required along the northerly lot line; and,

      ii) That a minimum 3.0 metre wide landscaped area shall be provided and maintained along the entire easterly lot line.

   (e) That notwithstanding Section 14.(9)(ii), the following provisions shall apply:

      i) That a minimum 1.5 metre wide landscaped area shall be provided and maintained along the Fennell Avenue lot line, including the area at the hypotenuse of the daylight triangle extending to the south side of the Upper James Street access driveway; and,
ii) That a minimum 2.8 metre wide landscaped area shall be provided and maintained along the westerly lot line north of the Upper James Street access driveway.

(f) That notwithstanding Sections 18A.(11) and (36), the following provisions shall apply:

i) That the parking and/or manoeuvring area used in conjunction with a restaurant may be located a minimum of 0.0 metres from the northerly side lot line and 3.0 metres from the easterly rear lot line; and,

ii) That the points of ingress and egress (access driveways) may be located a minimum of 3.0 metres from a residential district boundary.

3. That By-law No. 6593 (City of Hamilton) is amended by adding this By-law to Section 19B as Schedule S-1409b.

4. 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 “H” District provisions, subject to the special requirements in Section 2 of this By-law.

5. 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 __________, 2011.

__________________________  ________________________
R. Bratina                  Rose Caterini
Mayor                      Clerk

ZAR-10-043
Appendix "C" to Report PED11185 (Page 4 of 4)

This is Schedule "A" to By-Law No. 11-
Passed the .......... day of ................., 2011

Schedule "A"
Map Forming Part of By-Law No. 11-____
to Amend By-law No. 6593

Subject Property
649 Upper James Street

Change in Zoning from the "H/S-1499a" (Community Shopping and Commercial, etc.) District, Modified to the "H/S-1409b" (Community Shopping and Commercial, etc.) District, Modified

Scale: N.T.S.
File Name/Number: ZAR-11-041
Date: September 6, 2011
Planner/Technician: CB/NB

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT