SUBJECT: Application for a Change in Zoning for Lands located at 35 Pine Street (Hamilton) (PED06116) (Ward 1)

RECOMMENDATION:

That approval be given to Amended Zoning Application ZAR-05-104, Leona Dicenzo, owner, for a modification to the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District to permit a restaurant, not including a restaurant with a liquor license, with a maximum capacity of thirty persons, within the existing building and expansions thereto, for lands located at 35 Pine Street (Hamilton), as shown on the attached map marked as Appendix “A” to Report PED06116, on the following basis:

(a) That the subject lands be rezoned from the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District to the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, Modified.

(b) That the Draft By-law, attached as Appendix “B” to Report PED06116, which has been prepared in a form satisfactory to the City Solicitor, not be enacted by City Council until the owner applies for and receives final approval of a site servicing plan, to the satisfaction of the City’s Manager of Development Engineering.

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

(d) That upon finalization of the implementing By-law, the Kirkendall North Neighbourhood Plan be amended by changing the designation of the subject lands from “Single and Double” Residential to “Commercial & Low Density Residential”.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

The purpose of the application is to modify the existing zoning of the subject lands to permit a restaurant, not including a restaurant with a liquor license, within the existing building and expansions thereto. An amendment to the Kirkendall North Neighbourhood Plan will also be required to change the designation of the subject lands from “Single and Double” Residential to “Commercial & Low Density Residential”.

The proposal has merit and can be supported since the change in zoning is consistent with the Provincial Policy Statement, and conforms with the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan. Additionally, the proposed use would be compatible with, and complementary to, the surrounding land uses, and it is an appropriate infill use for the subject property.

BACKGROUND:

Proposal

The purpose of the application is to change the zoning of the subject lands at 35 Pine Street (as shown on Appendix “A”) from the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, to the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, Modified, to permit a restaurant, not including a restaurant with a liquor license, within the existing building and expansions thereto. The applicant proposes to convert and expand the existing single-detached dwelling for use as a tea room with a maximum capacity of thirty persons. The application has been amended to delete a request for a dwelling unit, in addition to the restaurant use.

The applicant has submitted a concept plan of the proposal (see Appendix “C”). The plan shows the location of the existing two storey 131m² dwelling, a proposed 12.30m² one storey rear addition, two parking spaces, a 1.5m² business identification wall sign, and a 0.6m² (per side) business identification ground sign.

The applicant has also requested modifications to recognize the location of the existing building by:

- reducing the minimum side yard setback for both sides to 0 metres, whereas the By-law requires 1.2 metres.
- reducing the minimum front yard setback to 1.8 metres, whereas the By-law requires 6.0 metres.
- reducing the minimum rear yard setback to 6.7 metres, whereas the By-law requires 7.5 metres.

Modifications have also been requested to reduce the minimum number of required parking spaces from five spaces to two spaces, and to require no manoeuvring space for the parking spaces on-site.
Details of Submitted Application

Owner: Leona Dicenzo

Location: 35 Pine Street

Description: Frontage: 7.11 metres
Area: 170.1m$^2$ (Approximately)

EXISTING LAND USE AND ZONING:

<table>
<thead>
<tr>
<th>Subject Lands</th>
<th>Existing Land Use</th>
<th>Existing Zoning</th>
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<tbody>
<tr>
<td>Subject Lands</td>
<td>Single Detached Dwelling</td>
<td>“D” (Urban Protected Residential - One and Two Family Dwellings, etc.) District</td>
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<tr>
<th>Surrounding Land Uses</th>
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<tr>
<td>North</td>
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<tr>
<td>Commercial (Retail)</td>
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<td>“H” (Community Shopping and Commercial, etc.) District</td>
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<th>South</th>
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<tr>
<td>Residential (Multi-Unit Apartments) and Commercial</td>
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<tr>
<td>“D” (Urban Protected Residential - One and Two Family Dwellings, etc.) District and “H” (Community Shopping and Commercial, etc.) District</td>
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<th>East</th>
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<td>Residential (Single Detached Dwelling)</td>
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<td>“D” (Urban Protected Residential - One and Two Family Dwellings, etc.) District</td>
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<th>West</th>
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<tr>
<td>Commercial (Retail)</td>
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<td>“H” (Community Shopping and Commercial, etc.) District</td>
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ANALYSIS/RATIONALE:

1. The proposal has merit and can be supported for the following reasons:

   (i) The proposed change in zoning is consistent with the Provincial Policy Statement and conforms to the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan.

   (ii) The proposal is compatible and complementary with the other commercial uses currently existing along Locke Street South.

   (iii) The proposal is suitably located on Locke Street South where there is metered on-street parking and public transit available.
2. The applicant has submitted a concept plan with the application (see Appendix “C”) and modifications to the Zoning By-law requirements have been identified for the proposed restaurant. The modifications relate to the location of the existing building and proposed addition, required parking spaces, manoeuvring space, and signage, as follows:

**Location of Existing Building and Addition**

The applicant is proposing a minimum front yard setback of 1.8 metres, whereas the “D” District provisions require a minimum front yard setback of 6.0 metres. This modification is required to legalize the location of the existing building and can be supported. Also, the applicant is proposing a 12.30 square metre rear addition to extend along the westerly wall of the existing building and to extend along the southerly wall of the existing rear addition (see Appendix “C”). As a result, the By-law must be modified to reduce the minimum rear yard setback from 7.5 metres to 6.7 metres, and to reduce the minimum side yard setback on both sides of the lot from 1.2 metres to 0.0 metres. These modifications are required to permit the expansion of a legal non-conforming situation and can be supported as it is an extension of existing building lines, and no adverse impacts will be created.

**Parking**

The applicant is proposing a thirty seat restaurant with two parking spaces, whereas the Zoning By-law requires a minimum of one parking space for every six persons who may be lawfully accommodated, resulting in a minimum requirement of five parking spaces. Staff is aware of the parking shortage on Locke Street and understands that a parking deficiency will create additional pressures on the neighbourhood. The applicant is proposing to relocate the existing thirty seat restaurant, known as the Vintage Garden Tea Room, from its existing location at 144 Locke Street South in which there is no on-site parking provided, to the existing building on the subject property (35 Pine Street), in which the applicant is proposing two parking spaces. The subject proposal will improve the parking shortage that this neighbourhood is currently experiencing. Staff recommends zoning provisions for a minimum two parking spaces for the proposed restaurant use within the existing building and expansions of it. It is noted that the applicant previously paid for Cash-in-Lieu of parking for the existing tea room at 144 Locke Street South.

The existing and proposed hours of operation for the thirty seat restaurant are as follows: Tuesday to Saturday from 11:00 am to 4:00 pm. The majority of the commercial uses along Locke Street South are retail and restaurant uses, in which the peak demand for parking is in the evenings and on weekends. As a result, the proposal will not have a significant impact on the peak supply for parking in the area.
To reflect the intensity of the restaurant type proposed (i.e. a tea room), the recommended zoning restricts the restaurant’s capacity to thirty persons and excludes restaurants with a liquor license.

**Manoeuvring Space**

The applicant is proposing the manoeuvring space for the parking area to be located off site, whereas the Zoning By-law provisions require the manoeuvring space be located on site. This modification is required to legalize an existing situation and can be supported. Staff is not aware of any complaints regarding the existing situation.

**Signage**

The applicant is proposing a 1.5m\(^2\) business identification wall sign, and a 0.6m\(^2\) (per side) business identification ground sign, whereas the Zoning By-law does not permit signage on the subject property. The City of Hamilton Official Plan states that business identification signs for commercial uses shall avoid conflicts with effective traffic control and the general amenity of the area. The proposed signage will not affect vehicular visibility and traffic control and Traffic Engineering and Operations have not indicated any concerns in this regard. Furthermore, staff is satisfied that the proposed wall sign, which will be located along Locke Street, will not affect the general amenity of the area.

As noted earlier, the subject property is surrounded by the “H” (Community Shopping and Commercial, etc.) District to the north, south and west. The proposed business identification wall sign and ground sign have been reviewed against the provisions of the “H” (Community Shopping and Commercial, etc.) District and draft Sign By-law. The “H” (Community Shopping and Commercial, etc.) District permits a business identification ground sign and a wall sign, provided it does not exceed 2.0m in height and does not exceed 3.55m\(^2\). The proposal conforms to the “H” (Community Shopping and Commercial, etc.) District provisions. The draft Sign By-law provisions state that the maximum sign area for a ground sign is 2.13m\(^2\), maximum height of the ground sign is 3.5m, and the maximum area of the wall sign is 18m\(^2\). The proposal conforms to the provisions of the draft Sign By-law.

3. No further road allowance widenings are required for Pine Street and Locke Street South. There are public watermains and separate storm and sanitary sewers available to service the subject lands. However, the proposed restaurant use would warrant the installation of an inspection manhole at the property line on the existing sanitary private drain in order to conform to the existing sewer use By-law for the City of Hamilton. As a condition of approval, staff recommends that the owner submit a site servicing plan and pay the current drawing review fee, and pay for and obtain the required servicing permits to the satisfaction of the City’s Manager of Development Engineering, prior to enactment of the recommended zoning.
4. The applicant is proposing a 12.3m\(^2\) one storey rear addition, which is subject to Site Plan Control. In this regard, matters such as screening, drainage and signage will be reviewed at the site plan stage.

5. Should the application be approved, an amendment to the Kirkendall North Neighbourhood Plan would be required to re-designate the subject lands from “Single and Double” Residential to “Commercial & Low Density Residential”. This amendment can be supported since the proposal is compatible with existing adjacent commercial uses in the neighbourhood.

**ALTERNATIVES FOR CONSIDERATION:**

If the application is denied, then the applicant has the option of using the property for the current range of “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District uses.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

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 a change in Zoning.

**POLICIES AFFECTING PROPOSAL:**

**Provincial Policy Statement**

The proposal falls within the parameters and is consistent with the Provincial Policy Statement (PPS).

**Hamilton-Wentworth Official Plan**

The subject property is designated “Urban Area” in the Hamilton-Wentworth Official Plan. Policy 3.1 states that a wide range of urban uses, based on full municipal services, will be concentrated in the Urban Areas. Therefore, as the nature of the application is for an amendment of the existing zoning to allow for a commercial use within the existing building, the proposal conforms to the Hamilton-Wentworth Official Plan policies.

**City Of Hamilton Official Plan**

The subject property is designated “Commercial” in the City of Hamilton Official Plan. The following policies of the City of Hamilton Official Plan, among others, are applicable to the proposed development:
“A.2.2.1 The primary uses permitted in the areas exceeding 0.4 hectare designated on Schedule “A” as COMMERCIAL will be for Commerce. In this regard, Commerce is defined as establishments involved in the buying and selling of goods and services; business offices; and hostels, convention and entertainment facilities.

A.2.2.35 Where COMMERCIAL USES are proposed to be developed adjacent to Residential land uses, Council will be satisfied that the following provisions are adequately met:

i) Access drive, parking and service areas will be screened and/or buffered such that noise, light or undesirable visual impacts emanating from the COMMERCIAL USE are mitigated;

A.2.2.36 The size of advertising, identification or other promotional signs and devices will be regulated by appropriate By-laws in order to avoid conflicts with effective traffic control and the general amenity of the area.

A.2.2.38 Where a proposal is made for a COMMERCIAL development in which proposed parking and/or loading space is less than generally required it must be demonstrated by the proponent to the satisfaction of Council that the proposal will not lead to nuisances through the parking or loading of vehicles on land or streets adjacent to the use.”

The proposal will be compatible with existing adjacent commercial and residential uses in accordance with the Official Plan criteria, and will contribute to the mix of commercial uses on Locke Street. As such, the proposal conforms to the City of Hamilton Official Plan.

Neighbourhood Plan

The subject property is designated “Single and Double” Residential within the Kirkendall North Neighbourhood Plan. The “Single and Double” Residential designation does not permit the proposed commercial use. An amendment to the Kirkendall North Neighbourhood Plan is required to re-designate the subject property from “Single and Double” Residential to “Commercial & Low Density Residential”.

**RELEVANT CONSULTATION:**

The following Departments/Agencies had no comments or objections:

- Public Works Department (Traffic Engineering and Operations Section).
- Corporate Services Department (Budget & Fiscal Policy Services).
- Corporate Services Department (Revenues Division).
- Hamilton Hydro.
- Union Gas.
Public Consultation

In accordance with the Public Participation Policy that was approved by Council on May 29, 2003, this application was pre-circulated to all property owners within 120 metres of the subject lands. No comments were received. In addition, a Public Notice sign of the application was posted on the property on February 2, 2006.

Notice of the Public Meeting for this rezoning application will be circulated to property owners within 120 metres of the subject lands and through a sign posted on the property in accordance with the regulations of the Planning Act.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
The public are involved in the definition and development of local solutions.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Ecological function and the natural heritage system are protected.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No

:DF
Attachs. (3)
Subject Property
35 Pine Street (Hamilton)

Change in Zoning from the "D" (Urban Protected Residential - One and Two Family Dwellings, etc.) District to the "D/S-1545" (Urban Protected Residential - One and Two Family Dwellings, etc.) District, Modified.
WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality “City of Hamilton”;  

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the “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 the Council of The Corporation of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) 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 Section of Report of the Planning and Economic Development Committee at its meeting held on the day of 2006, 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 Hamilton Planning Area, approved by the Minister under the Planning Act on June 1, 1982.  

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

1. Sheet No. W-13 of the District maps, appended to and forming part of By-law No. 6593 (Hamilton), is amended,
(a) by changing from the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District to the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, Modified;

the lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”.

2. That the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District regulations as contained in Section 10 of Zoning By-law No. 6593, applicable to the lands identified in Section 1 of this by-law, be modified to the extent only of the following special requirements:

(a) That notwithstanding Section 10 (1) of Zoning By-law No. 6593, a restaurant, excluding a restaurant with a license issued under the **Liquor Licence Act**, with a maximum capacity of 30 persons, shall be permitted within the building existing on the day of passing of this by-law, being the _____ day of _____, 2006, and any expansions thereto.

(b) That notwithstanding Section 10 (1) of Zoning By-law No. 6593, a business identification sign that is a wall sign of an occupancy or use, where the total aggregate area does not exceed 1.5 square meters, shall be permitted.

(c) That notwithstanding Section 10 (1) of Zoning By-law No. 6593, a business identification sign that is a ground sign of an occupancy or use, where the total aggregate area per side does not exceed 0.6 square meters, shall be permitted.

(d) That notwithstanding Section 10 (3) (i) of Zoning By-law No. 6593, for the building existing on the day of the passing of this by-law, being the _____ day of _____, 2006, or expansions thereto, a minimum front yard of a depth of 1.8 metres shall be required.

(e) That Section 10 (3) (ii) of Zoning By-law No. 6593 shall not apply for the building existing on the date of passing of this by-law, being the _____ day of _____, 2006, or expansions thereto.

(f) That notwithstanding Section 10 (3) (iii) of Zoning By-law No. 6593 for the building existing on the day of the passing of this by-law being, the _____ day of _____ 2006, or expansions thereto, a minimum rear yard of a depth of 6.7 metres shall be required.

(g) That notwithstanding the parking regulations of Section 18A of Zoning By-law No. 6593, a minimum of 2 parking spaces shall be provided for the restaurant use in clause (a) above.
(h) That Section 18A (1) (f) of Zoning By-law No. 6593, shall no apply to the restaurant use in clause (a) above

3. 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 "D" District provisions, subject to the special requirements referred to in Section 2.

4. By-law No. 6593 (Hamilton) is amended by adding this by-law to Section 19B as Schedule S-1545.

5. Sheet No. W-13 of the District Maps is amended by marking the lands referred in Section 1(a) of this by-law as S-1545.

6. 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 , 2006.

__________________________________________________________________________  _______________________________________________________________________
MAYOR                                                               CLERK

ZAR-05-104
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

Schedule “A”

Map Forming Part of By-law No. 06-
to Amend By-law No. 6593

Subject Property
35 Pine Street (Hamilton)

Change in Zoning from the "D" (Urban Protected Residential - One and Two Family Dwellings, etc.) District to the "D/S-1545" (Urban Protected Residential - One and Two Family Dwellings, etc.) District, Modified.