SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-07:129 for the property known as 468-470 James Street North - Supported by the Planning and Economic Development Department (PED07264) (Ward 2)

RECOMMENDATION:

That Report PED07264 respecting Committee of Adjustment Minor Variance Application HM/A-07:129 for the property known as 468-470 James Street North, as shown on Appendix “A” to Report PED07264, denied by the Committee of Adjustment but supported by the Planning and Economic Development Department, be received for information.

EXECUTIVE SUMMARY:

Minor Variance Application HM/A-07:129 sought relief from the provisions of Zoning By-Law No. 6593 so as to permit an outdoor patio accessory to an existing legally established non-conforming tavern in the rear and exterior side yards on a property abutting residually zoned properties along the north side lot line and east rear lot line.

The variance was considered before the Committee of Adjustment (Urban) on June 20, 2007. Comments to the Committee of Adjustment from staff supported the requested variance as it was consistent with the Provincial Policy Statement, met the purpose and
The intent of the Official Plan and Zoning By-law, was appropriate for the development of the lands, and was considered minor in nature.

The Committee of Adjustment denied the application for the reasons set out in Appendix “B”. The decision was appealed to the Ontario Municipal Board by the applicant. An Ontario Municipal Board hearing has yet to be scheduled.

BACKGROUND:

In December 2002, City Council endorsed a staff report related to the roles and responsibilities of the Committee of Adjustment. The recommendations included the following:

“That the Planning and Development Department be authorized and directed to prepare an Information Report to the Committee of the Whole whenever an appeal is made to the Ontario Municipal Board, of a decision made by the Committee of Adjustment to deny an application(s) that was supported by staff. In response to such a report, Council may determine its position on the Committee of Adjustment decision and may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

ANALYSIS/RATIONALE:

The subject lands are zoned “H/S-978” (Community Shopping and Commercial, etc.) District, Modified in the City of Hamilton Zoning By-Law. The property to the north is zoned “DE-3” (Multiple Dwelling) District, and abuts the northerly adjoining side lot line of the subject property. The adjoining property to the east is zoned “D” (Urban Protected Residential – One and Two Family Dwelling, etc.) District, and abuts the easterly rear lot line of the subject property.

The applicant is requesting a variance to add an outdoor patio on the south-east corner of the existing legal non-conforming tavern (see Appendix “C”), whereas the By-Law prohibits the outdoor patio because the side and rear lot lines abut a residential zone.

In staff’s opinion, the adjoining residential property to the north of the subject property would be adequately buffered from the patio by the building on the subject property (see Appendix “C”). Furthermore, the amenity area of the adjoining residentially zoned property to the east of the subject property is approximately 30 m from the proposed location of the patio and would be adequately buffered due to the separation distance as well as through measures recommended as conditions of minor variance approval. These measures included:

1) That the applicant receive site plan approval for the proposed patio to the satisfaction of the Manager, Development Planning.
2) That the applicant investigate the noise levels on the site and determine and implement the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of the Environment’s recommended sound level limits. An acoustical report prepared by a qualified Professional Engineer containing the recommended control measures shall be submitted to the satisfaction of the City of Hamilton, Director of Planning, and implemented to the satisfaction of the Manager of Municipal Law Enforcement.

Furthermore, through the Site Plan Approval process, the owner would be required to plant a vegetative screening along the easterly property line to reduce the impact of the patio on the abutting residential property, and lighting issues would be addressed. Staff determined that the proposed patio would not have a detrimental impact upon either adjoining residential property, subject to the conditions mentioned above.

With respect to the Minor Variance application (HM/A-07:129), staff noted that the requested variance is minor in nature, is appropriate and desirable for the use of the lands, and meets the intent and purpose of the Official Plan and Zoning By-Law, thereby satisfying the four tests of Section 45 of the Planning Act.

**ALTERNATIVES FOR CONSIDERATION:**

**Option 1**

Council may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee of Adjustment decision, and to retain outside professional(s).

**Option 2**

Council may decide to support the appeal against the Committee of Adjustment’s decision to deny, and direct Legal Services to attend the Ontario Municipal Board Hearing in support of the appeal to the application and to use City Planning staff as its professional witness.

**Option 3**

Council may decide to not send Legal Services to the Ontario Municipal Board, either in support of the Committee’s decision or against the decision.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial: Planning and Economic Development Department staff supported the subject application. However, if Council wishes to support the Committee denial, the City must retain an outside planning consultant who can professionally support the denial. If retained, the cost of hiring the planner for the hearing is estimated at $2,500 to $5,000. In addition, one lawyer from Legal Services would be required for preparation and attendance at
the hearing. Legal and planning staff costs are covered by the respective Departmental Work Programs/Budgets.

Staffing: One representative from Legal Services would be required for preparation and attendance at the Ontario Municipal Board Hearing, and one member of planning staff would attend as an expert witness at the hearing should Council support Option 2 above.

Legal: N/A

POLICIES AFFECTING PROPOSAL:

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).

Hamilton-Wentworth Official Plan

The subject property is designated “Urban Area” in the Hamilton-Wentworth Official Plan. The Hamilton-Wentworth Official Plan, under 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 application meets the purpose and intent of the 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 which permits restaurants and their accessory uses. The application meets the purpose and intent of the Official Plan.

City of Hamilton Zoning By-Law

The subject property is zoned “H/S-978” (Community Shopping and Commercial, etc.) District, Modified, under the City of Hamilton Zoning By-law which permits restaurants and accessory uses. The By-Law regulations prohibit the proposed outdoor patio on the subject property because it abuts residentially zoned lands along its northerly side yard and easterly rear yard. Staff is of the opinion that the minor variance to permit an outdoor patio, meets the purpose and intent of the Zoning By-law as discussed in the Analysis/Rational section of this report.
RELEVANT CONSULTATION:

- Legal Services Division.

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
Human health and safety 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

:DB
Attached. (3)
COMMITTEE OF ADJUSTMENT

APPLICATION NO. HMA-07:129
SUBMISSION NO. A-12907

IN THE MATTER OF The Planning Act, 1990 and of the Zoning By-Law No. 6593, of the City of Hamilton, Sections 14, 18 and 18B Schedule S-979.

AND IN THE MATTER OF the Premises known as Municipal number 468 - 470 James Street North, in the City of Hamilton and in an "HS-078" (Community Shopping and Commercial, etc.) district.

AND IN THE MATTER OF AN APPLICATION by the agent Tony Connolly on behalf of the owners 1007257 Ontario Inc. and 1994512 Ontario Inc. (do Gary Cappellini), for relief from the provisions of the Zoning By-Law No. 6593, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the installation of an outdoor patio accessory to the existing legally established non-conforming tavern notwithstanding that this property abuts residentially zoned lands along its northerly side lot line and along its easterly rear lot line whereas the By-law prohibits outdoor patios where the property abuts a residential zone along any property line other than the rear property line.

Note: The patio is shown to encroach on the Ferrie Street East road allowance. An Encroachment Agreement with the Roads Department may be required for the outdoor patio shown to encroach on the Road Allowance.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reasons:

1. The Committee, after carefully reviewing the evidence and submissions made by the parties prefers the evidence of the area residents that the establishment of the patio at the proposed location will have a significant negative impact on the surrounding residential area.

2. The Committee is satisfied from the evidence before it that the establishment of the patio in association with the existing tavern is not desirable for the appropriate development of the land and building and is not minor in nature.

3. The Committee is of the opinion that the relief requested for the establishment of the patio in such close proximity to a residential area is inconsistent with the general intent and purpose of the By-law and of the Official Plan as referred to in Section 45 of The Planning Act, 1990.

DATED AT HAMILTON this 20th day of June, 2007

M. Dudzic (Chairman) C. Lewis

D. Drury V. Abraham

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE APPEALS COMMITTEE MAY BE FILED IS July 16th, 2007.

NOTE: This decision is not final and binding unless otherwise noted.

The period of appeal has expired and no such appeal has been filed.

This decision is now final and binding.

CERTIFIED A TRUE COPY.

Secretary-Treasurer