SUBJECT: Appeal of Sign Variance Application SV-07-03 for the Property Known as 119 King Street West - Denied by the Acting Director, Planning Division (PED07241) (Ward 2)

RECOMMENDATION:

That the Appeal of Sign Variance Application SV-07-03, Hamilton Entertainment and Convention Facilities Inc. (HECFI), Applicant, for variances to the Hamilton Sign By-law (06-243), to permit a Wall Sign with an Electronic Message Display to utilize video and animation, and to permit the sign to offer third party advertising, for the property known as 119 King Street West, as shown on Appendix “A” to Report PED07241, be denied on the following basis:

(a) That the proposed variances conflict with the general intent and purpose of the City’s new Sign By-law No. 06-243, and do not meet the four tests for sign variances provided in Section 6.5 of the By-law.

Tim McCabe
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

Hamilton Entertainment and Convention Facilities Inc. (HECFI) have requested variances to the City of Hamilton’s new Sign By-law to permit the use of animation and third party advertising on an existing Wall Sign with Electronic Message Display located at 119 King Street West. The requested variances were denied by the Acting Director of Planning on July 16, 2007. This decision was appealed by the applicant on July 24, 2007. Staff recommends that the appeal be denied because the requested variances conflict with the general intent and purpose of Sign By-law 06-243, and do not meet the four tests for sign variances provided in Section 6.5 of the By-law.

BACKGROUND:

City of Hamilton Sign By-law (By-law 06-243)

Hamilton City Council approved a new Sign By-law (06-243) on August 9, 2006 to regulate signs and other advertising devices under a consolidated format. Following the approval of this By-law, a transition period was permitted until February 1, 2007, before the By-law became effective to enable existing signs to be brought into compliance, where necessary.

The new Sign By-law permits the consideration of variances under Part 6.0. As set out under Section 6.3, variances may be authorized by the Director of Development and Real Estate (now Director of Planning) or his designate. Section 6.6 of the By-law allows an applicant to appeal decisions on variance applications to the Economic Development and Planning Committee for a hearing. Council may uphold or vary the recommendations of the Economic Development and Planning Committee and the applicant is not entitled to a further hearing before Council. The decision of Council is final.

Proposed Sign Variances for Application SV-07-03

Hamilton Entertainment and Convention Facilities Inc. (HECFI) have applied for variances to Hamilton’s Sign By-law (06-243) for a Wall Sign with an Electronic Message Display, which is mounted to the second floor wall of the Hamilton Convention Centre at the southwest corner of King Street West and MacNab Street South (see Appendix “A”).

The requested variances are specifically noted as follows:

(1) To permit a Wall Sign with an Electronic Message Display to display a message less than 3 seconds with movement and change in colour and intensity of illumination (video/animation), whereas Section 5.3.8 of the By-law requires that no message displayed on an Electronic Message Display on a Wall Sign shall be
displayed for less than 3 seconds, during which there shall be no movement or change in colour or intensity of illumination; and,

(2) To permit a Wall Sign with an Electronic Message Display to offer third party advertising, whereas the By-law only allows Billboards, by definition, to use third party advertising.

The proposed use of animation and third party advertising has not yet been activated for the existing sign. The sign specifications are provided in Appendix “B”. Photographs showing the context of the sign in relation to the existing building are provided in Appendix “C”.

“Electronic Message Display” means a permanent sign which is electronically controlled and which displays information in a prearranged sequence, and on which the intensity of illumination is maintained at a constant level.

“Billboard” means an outdoor Sign erected, located or displayed by a Person engaged in the sale or rental of the space on the Sign, upon which space is displayed, copy that advertises goods, products, or services not sold or offered on the Property where the Sign is erected, located, or displayed, and the sign is either single faced or double-faced.

A letter from the Acting Director of Planning to deny the requested variances was sent to the applicant on July 16, 2007 (see Appendix “D”). On July 24, 2007, the applicant appealed the decision.

**ANALYSIS/RATIONALE:**

The application for the requested variances was circulated on May 8, 2007, to internal departments and agencies. The comments received generally indicated no concern or objection to the approval of the proposed variances.

Section 6.5 of By-law 06-243 directs that the consideration of variances shall have regard to four tests, which are set out as follows:

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

Comment: The sign is an existing Wall Sign with Electronic Message Display, which has capabilities for animation and third party advertising. The use of animation or third party advertising has not yet been activated, but is being requested at this location to complement other HECFI signs located in the Downtown near Hamilton Place and at Copp’s Coliseum, which utilize these capabilities and predate the approval of the new Sign By-law. In particular, the request for third party advertising is desired for revenue-
generating purposes. The applicant has not demonstrated that there are any special circumstances or conditions that apply.

(b) Whether strict application of the provisions of the 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 the By-law.

Comment: If the requested variances were not granted, the existing sign could continue to be utilized for Electronic Message Display and would not need to be removed or altered. Other signs operated by HECFI near Hamilton Place and at Copp’s Coliseum, which are legally recognized, would allow for continued third party advertising and revenue generation. The applicant has not demonstrated that the denial of the variances would result in unnecessary and unusual hardship inconsistent with the general intent and purpose of the By-law.

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

Comment: The existing sign was installed as a Wall Sign with Electronic Message Display in March 2007. Although video capabilities are available, the sign has not been activated for this purpose or for third party advertising. At the time of the sign permit approval in February 2007, the applicant was also advised by the Building Services Division that the sign could not be used for animation or third party advertising (see Appendix “E”). Therefore, the applicant was aware of the requirements of the new Sign By-law and the proposed variances to the Sign By-law are not being made to remedy an existing (illegal) situation.

(d) Whether the sign will alter the essential character of the area in which it will be located.

Comment: The existing Wall Sign is permitted to be used for electronic display (see Appendix “C”) and a permit for this type of use was issued on February 19, 2007. The permit also specifies that the sign is not to be used as an animated sign (see Appendix “E”).

The proposed use of animation (i.e. video) would not conform to Policy 6.2.3.3.1(p) of the Downtown Secondary Plan because signage geared to fast-moving traffic is not permitted. It is important to note that in the public consultation phase of the Sign By-law review, the public identified video signs as a distraction to drivers as a current Sign By-law issue. The consultant’s background report for the By-law review identifies animated billboards as adding to driver distractions and potentially affecting road safety. “Animated billboards because of their size, illumination and changing messages, can become a dominant feature of a street, which may negatively affect the character of an area.” There is a wide body of research available which the City has reviewed to
discourage the use of animated signs for traffic safety reasons. Hence, Section 5.3.8 of the By-law effectively prohibits these types of Wall Signs at this location.

Policy 6.2.3.3.1(p) of the Downtown Secondary Plan states that "Signage shall be used for way-finding and identifying buildings and public places in the downtown" and "New signage geared to fast-moving vehicular traffic such as billboards or permanent portable signs shall not be permitted". The proposed variance to permit the sign to use third party advertising would not meet the intent of this policy because it would introduce advertising that is City-wide in scope and which would not relate exclusively to the downtown. Through the use of third party advertising, the sign would also automatically be regarded as a “Billboard” under By-law 06-243, which would violate Policy 6.2.3.3.1(p) of the Plan, which prohibits the use of billboards in the downtown. Section 5.14.2 (b) of the By-law states that “Billboards shall not be erected, located or displayed on a property within the Downtown Community Improvement Project Area”, and Section 5.14.2 (i) of the By-law states that “Billboards shall only be erected, located or displayed on vacant, undeveloped property zoned commercial or industrial”. The subject property is located in the Downtown Community Improvement Project Area and the lands are developed rather than vacant. Therefore, due to existing Official Plan policies and the Sign By-law provisions which implement the Plan, the variance to permit the sign to utilize third party advertising should not be granted.

The proposed variances, if granted, would be in direct conflict with the intent of the Sign By-law. In this regard, refusal of this appeal may discourage other similar applications which, if approved, would undermine the intent of the Sign By-law.

**ALTERNATIVES FOR CONSIDERATION:**

**Option 1:**

Council may decide to support only the request for Variance 1, which will allow for the viewing of animated advertising sequences.

**Option 2:**

Council may decide to support only the request for Variance 2, which will permit the use of third party advertising.

**Option 3:**

Council may decide to support the requests for both Variances 1 and 2.

**Option 4:**

Council may decide to deny the requests for Variances 1 or 2.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: N/A.

Staffing: N/A.

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 proposal meets the purpose and intent of the Hamilton-Wentworth Official Plan.

City of Hamilton Official Plan

The subject property is designated “Central Business District” in the Downtown Secondary Plan.

The proposed use of animation (i.e. video) identified for Variance 1 would not conform to Policy 6.2.3.3.1(p) of the Downtown Secondary Plan because signage geared to fast-moving traffic is not permitted.

The proposed variance to permit the sign to use third party advertising would not meet the intent of Policy 6.2.3.3.1(p), which allows signage for way-finding and identification. The variance would introduce advertising that is City-wide in scope and which would not relate exclusively to the downtown. The sign would be regarded as a billboard because of the use of third party advertising.

The application does not meet the purpose and intent of the Official Plan.
City of Hamilton Zoning By-law

The subject property is zoned “D1” Downtown Central Business District in the Hamilton Zoning By-law. The Zoning By-law does not regulate signage.

**RELEVANT CONSULTATION:**

Departments/Agencies having no concerns or objections:

- Traffic Engineering Section, Operations and Maintenance Division, Public Works Department.
- Bell Canada.
- Horizon Utilities.

**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 use of 3rd party advertising on the existing sign would not contribute to community well being because it would not enhance the downtown.

- **Environmental Well-Being is enhanced.** ☑ Yes ☐ No
  Human health and safety may be affected due to the potential for traffic accidents from an animated sign.

- **Economic Well-Being is enhanced.** ☐ Yes ☑ No
  Investment in Hamilton may be enhanced and supported by additional advertising revenue.

**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

:CT

Attachs. (5)
Appendix "A" to Report PED07241 (Page 1 of 1)

Location Map

- Site of the Application

119 King Street West
Appendix “B” to Report PED07241
Sign Specifications for Existing Wall Sign at 119 King Street West
Appendix “C” to Report PED07241
Photos of Sign at 119 King Street West
Appendix “D” to Report PED07241
Letter of Denial for Requested Variances to Applicant

Planning and Development Department, Planning Division
Physical Address: 71 Main Street West, 7th Floor
Phone: 905-546-2424 x3933 Fax 905-546-4202

July 16, 2007

FILE: SV-07-03

Brad Calder
Director of Operations/Events Delivery
Hamilton Entertainment and Convention Facilities Inc.
10 MacNab Street South,
Hamilton ON, L8P 4Y3

Dear Mr. Calder:

Re: Sign Variance Application, 119 King Street West, Hamilton (Ward 2)

Please be advised that pursuant to By-law No. 06-243, which regulates signs and other advertising devices pursuant to the provisions of the Municipal Act and which delegates the approval of variances from the provisions of the By-law to the Director of Development and Real Estate, I hereby deny Sign Variance Application (SV-07-03):

1) To permit a Wall Sign with an Electronic Message Display to display a message less than 3 seconds with movement and change in colour and intensity of illumination, whereas Section 5.3.8 of the By-law requires that no message displayed on an Electronic Message Display on a Wall Sign shall be displayed for less than 3 seconds, during which there shall be no movement and change in colour or intensity of illumination; and,

2) To permit a wall sign with an Electronic Message Display to offer third party advertising, whereas the By-law only allows Billboards, by definition, to use third party advertising.

The reason for the refusal is that the proposed variances conflict with the general intent and purpose of the By-law and do not meet the 4 tests for sign variances provided in Section 6.5 of By-law 06-243.

Should you have any questions, please contact Cam Thomas at 546-2424 Ext. 4229, or via email at cthomas@hamilton.ca.
Appendix “D” to Report PED07241
Letter of Denial for Requested Variances to Applicant

Yours truly,

Paul Mallard, MCIP, RPP
Acting Director, Planning Division

cc: Robert Walters, Senior Project Manager, Development Planning (West)
Ray Lee, Acting Manager, Development Planning
Dan Mousseau, Sign By-law Administrator
John Spolnik, Manager of Engineering and Zoning
Bob Brattina, Councillor, Ward 2
Appendix “E” to Report PED07241
Copy of Permit for Wall Sign at 119 King Street West (Page 1 of 1)

BUILDING PERMIT

PERMIT NO. 06 288367 30 OS
119 KING ST W Plan PART LOT 18, 19, 24, 25 & 35 TO 39, HAMILTON

This Permit is issued to:

(APPLICANT) PATTISON SIGN GROUP (DOMINIC ROTUNDO)
453 CHANCELLOR DR
VAUGHAN ON L4L 5E1
Work: (416) 738-9259

(OWNER) CITY OF HAMILTON
71 MAIN ST W
HAMILTON ON L8P 4Y5
Work: (905) 546-2424

(CONTRACTOR) PATTISON SIGN GROUP (DOMINIC ROTUNDO)
453 CHANCELLOR DR
VAUGHAN ON L4L 5E1
Work: (416) 738-9259

(TENANT)

Description of Work:

Size and area of sign: 4'-2" x 12'-7" = 52.23 sq. ft. (4.85 sq. m)
Wording on sign: Scrolling Message Board for Events at the Convention Centre

“ELECTRONIC MESSAGE DISPLAY” MEANS A PERMANENT SIGN WHICH IS ELECTRONICALLY CONTROLLED AND WHICH DISPLAYS INFORMATION IN A PREARRANGED SEQUENCE, AND ON WHICH THE INTENSITY OF ILLUMINATION IS MAINTAINED AT A CONSTANT LEVEL, (AN ANIMATED SIGN IS NOT PERMITTED).

Conditions:

All Construction must comply with the Ontario Building Code.
Plastic materials used in sign faces shall conform to Section 3.4.4.1(1) of the O.B.C.
Please call for inspections at the construction stages indicated on the attached letter.
Approval was received from Ed Switsky of the Traffic Department on November 2, 2006.

Zoning Data:

Front Yard: m
Rear Yard: m
Side Yard: m
Zoning: I5-532

REVIEWED BY:

NOTICE

PLANS AND DOCUMENTS
The Plans and documents, on the basis of which this Permit was issued, shall be kept on site.

REVOCATION
This permit may be revoked if it was issued on the basis of misstatement or false information or if in error, or where the construction has been substantially suspended or discontinued for a period in excess of one year. This permit will be deemed to have lapsed, and will be revoked if construction has not commenced within six months of the date of issue.

ISSUED BY: Bruce W Robinson
FOR CHIEF BUILDING OFFICIAL

CONSTRUCTION VALUE: 10,000.00

DATE ISSUED: February 19, 2007