SUBJECT: Committee of Adjustment Minor Variance Application HM/A-09:219 for the Property Known as 1008 King Street West, Hamilton - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED10021) (Ward 1)

RECOMMENDATION:

That Report PED10021, respecting Committee of Adjustment Minor Variance Application HM/A-09:219, for the property known as 1008 King Street West (Hamilton), as shown on Appendix “A” to Report PED10021, supported by the Planning and Economic Development Department, but denied by the Committee of Adjustment, be received for information.

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

The applicant submitted Minor Variance Application HM/A-09:219 so as to permit the expansion and conversion of an existing take out restaurant into a 24 seat restaurant notwithstanding that:

1. No parking shall be provided instead of the minimum required 4 parking spaces.
The minor variance application was considered before the Committee of Adjustment on September 17, 2009. Comments to the Committee of Adjustment from staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, in conformity to the Hamilton-Wentworth Official Plan, and would maintain the intent and purpose of the City of Hamilton Official Plan and City of Hamilton Zoning By-law.

The Committee of Adjustment denied the application for the reasons provided in Appendix “C”. The decision has been appealed to the Ontario Municipal Board (OMB) by the applicant. To date, an Ontario Municipal Board hearing has not been 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 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 designated “Urban” within the Hamilton-Wentworth Official Plan. As the nature of the application is for relief from the parking provisions of the Zoning By-law No. 6593, as amended, the proposal is consistent with the policies of the Provincial Policy Statement, and conforms to the policies of the Hamilton-Wentworth Official Plan. The subject lands are designated “Commercial” in the City of Hamilton Official Plan, which permits a variety of commercial uses including restaurants.

The subject lands are designated “Mixed Use” in the Ainslie Wood Westdale Secondary Plan, which permits, among other uses, restaurants.

The subject property is zoned Neighbourhood Shopping Centre “G/S-1361” District, Modified, in the City of Hamilton Zoning By-law No. 6593, which permits among other uses, a restaurant as-of-right. The lands to the south, east, and west of the subject property are commercial uses and are also zoned Neighbourhood Shopping Centre “G/S-1361” District, Modified. The lands to the north of the subject property are single family residential dwellings and are zoned Urban Protected Residential “C/S-1361” District, Modified.
The applicant is proposing to convert and expand an existing take-out restaurant into a 24 seat restaurant notwithstanding the following:

1. No parking shall be provided instead of the minimum required 4 parking spaces.

With respect to Application HM/A-09:219, staff noted that the requested minor variance to provide relief from the By-law provisions respecting minimum required parking was supportable, as there is a paid municipal parking lot on both the north and south side of King Street between Marion Avenue and Paisley Avenue, on-street parking in the neighbourhood, and alternative transit options. Staff conducted a site visit of the subject property and identified several restaurants, and other commercial uses on both the north and south side of King Street between Marion Avenue and Paisley Avenue, of which none of these restaurants or commercial uses have on-site parking. Furthermore, staff noted that there is no opportunity for the applicant to create on site parking for the subject property, and there is no opportunity for any other commercial property in the area to create on-site parking.

Public Works Traffic, Engineering, and Operations Division had no comments in respect to the proposed application. Hamilton Municipal Parking Services had the following comments: “For the information of the Committee, the applicant is requesting a variance to provide none of the 4 required parking spaces for this property. There is a high demand for on-street parking in the vicinity of this property, which has resulted in very restrictive parking regulations in the residential sections of the community. Short duration three-hour metered parking is available on King Street on a first-come-first-serve-basis. Overflow parking from this facility may add additional pressures to the existing on-street parking network.”

It is the opinion of staff that the proposed variance is minor in nature, maintains the intent and purpose of the City of Hamilton Official Plan and City of Hamilton Zoning By-law, and in general, represents good planning. Therefore, staff recommended that the minor variance application be approved.

**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 to deny the application, 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 of Adjustment’s decision to deny the application, the City must retain an outside planning consultant, and any other expertise who can professionally support the denial. If retained, an estimate of the cost and a funding source would be determined at a later date. In addition, one lawyer from Legal Services would be required for preparation and attendance at the hearing.

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

Legal: No legal implications are expected.

POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement (PPS)

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. 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.
As the proposed variance is to permit a 24 seat restaurant with no on-site parking, the minor variance application conforms to the Hamilton-Wentworth Official Plan.

**City of Hamilton Official Plan**

The subject property is designated “Commercial” in the City of Hamilton Official Plan. Policy 2.2.1 states: “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; convention and entertainment facilities.”

Policy A.2.2.38 states: “Where a proposal is made for a Commercial development in which 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.”

Municipal Parking staff noted that there are parking issues in the area, however, there is no opportunity for the applicant or any other commercial property in the area to create on-site parking.

As the proposed variance is to permit a 24 seat restaurant with no on-site parking, it is the opinion of staff that the proposed variance is in conformity with the “Commercial” designation of the City of Hamilton Official Plan.

**Ainslie Wood Westdale Secondary Plan**

The subject property is designated “Mixed Use” in the Ainslie Wood Westdale Secondary Plan. Policy 6.4.5 1) states “Mixed Use” areas permit residential, commercial, or institutional, either as a stand alone development or in a mixed use building.”

As the proposed variance is to permit the conversion from a take-out restaurant to a 24 seat restaurant, the proposal conforms to the Ainslie Wood Westdale Secondary Plan.

**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 is involved in the definition and development of local solutions.

Environmental Well-Being is enhanced. ☒ Yes ☐ No
Human health and safety is 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
Attachs. (3)
Location Map

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
1008_KingSW

Date:
October 26, 2009

Appendix "A"

Scale: N.T.S.

Planner/Technician:
DB/KA

Subject Property

1008 King Street West, Hamilton

Ward 1 Key Map

N.T.S.
COMMITTEE OF ADJUSTMENT

DECISION OF THE COMMITTEE

APPLICATION NO. HM/A-09:219
SUBMISSION NO. A-219/09

Zoning By-Law No. 6593, of the City of Hamilton, Sections 13, 18A and 19B Schedule S-1361.

AND IN THE MATTER OF the Premises known as Municipal number 1008 King Street West, in the City of Hamilton and in a "G/S-1361" (Neighbourhood Shopping Centre, further amended by By-law 96-109) district;

AND IN THE MATTER OF AN APPLICATION by the agent R.J. Plouffe on behalf of the owner Hanna Rozencwieg, 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 expansion and conversion of an existing take out restaurant into a 24 seat restaurant notwithstanding that no parking shall be provided on site instead of the minimum required 4 parking spaces.

Variances were written as requested by the applicant.

THE DECISION OF THE COMMITTEE IS:

That the variance, as set out in paragraph three above, is DENIED for the following reasons:

1. The Committee having regard to the evidence is of the opinion that the relief requested is beyond that of a minor nature.

2. The relief requested is undesirable for the appropriate development of the land and building and 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.

3. The Committee having regard to the intensity of use of the subject parcel of land is of the opinion that such development would not be appropriate for the lands.

4. The Committee having regard to the evidence is of the opinion that there will be an adverse impact on the neighbourhood.

DATED AT HAMILTON this 17th day of September, 2009

M. Dudzić (Chairman)

L. Gaudry

D. Drury

C. Lewis

M. Switzer

D. Stamatou

V. Adelsten

L. Tew

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS October 7th, 2009.

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