SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-07:130 for the Property Known as 175 Young Street - Supported by the Planning and Economic Development Department (PED07265) (Ward 2)

RECOMMENDATION:

That Report PED07265 respecting Committee of Adjustment Minor Variance Application HM/A-07:130 for the property known as 175 Young Street, as shown on Appendix “A” to Report PED07265, 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-07:130 sought relief from the provisions of Zoning By-Law No. 6593 so as to permit an “L” shaped 60 seat outdoor patio accessory to an existing restaurant at the northwest corner of Young Street and Ferguson Avenue South, notwithstanding that the property adjoins a residential district along the rear and easterly side lot lines.

The variance was considered before the Committee of Adjustment (Urban) on June 20, 2007. Comments to the Committee of Adjustment from staff supported the variance as it was consistent with the Provincial Policy Statement, and meets the purpose and intent of the Official Plan and the 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 provided in Appendix “B”. The decision has been 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” (Community Shopping and Commercial, etc.) District and “G-3” (Public Parking Lots) District in the City of Hamilton Zoning By-Law (See Appendix “A”). The adjoining property to the west is zoned “E” (Multiple Dwellings, Lodges, Clubs, etc.) District and the lands to the north are zoned “A” (Conservation, Open Space, Park and Recreation) District, which are both defined as residential zones.

The applicant is requesting a variance to permit a 60 seat outdoor patio in the front and exterior side yards at the southeast corner of the building (see Appendix “C”), whereas the By-Law prohibits outdoor patios where a side and rear lot line abut a residential district.

The purpose and intent of the By-Law is to protect residential properties from noxious impacts.

Staff determined that because the building on the subject property would screen the proposed patio from the abutting residential property at 163 Young Street, that the patio would have little impact. Only a narrow width of the patio would face the building on the property to the west, separated by in excess of 38 m. The “A” District lands to the north would not be adversely impacted.

With respect to application HM/A-07:130, 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, satisfying the four tests of Section 45 of the Planning Act. Therefore, staff recommended that the 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, 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 property is designated as “Residential” in the City of Hamilton Official Plan which permits small scale commercial uses, including uses accessory to restaurants. The application meets the purpose and intent of the Official Plan.

City of Hamilton Zoning By-Law

The subject property is zoned “H” (Community Shopping and Commercial, etc.) District and “G-3” (Public Parking Lots) District, under the City of Hamilton Zoning By-law which permits a restaurant and accessory uses. The By-Law regulations prohibit the establishment of an outdoor patio on the subject property because the northerly rear lot line and westerly side lot line abut residentially zoned lands. Staff is of the opinion that the requested 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

DECISION OF THE COMMITTEE

APPLICATION NO. HMA-07:130
SUBMISSION NO. A-130/07

IN THE MATTER OF The Planning Act, 1990 and of the Zoning By-Law No. 6593, of the City of Hamilton, Sections 13C, 14 and 18.

AND IN THE MATTER OF the Premises known as Municipal number 175 Young Street, in the City of Hamilton and in an "H" (Community Shopping and Commercial, etc.) and "G-3" (Public Parking Lots) district;

AND IN THE MATTER OF AN APPLICATION by the agent Tony Connelly on behalf of the owners 1087257 Ontario Inc. & 1664512 Ontario Inc. (c/o Gary Ceppetti), 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 an 87.7m² "L" shaped sixty (60) seat outdoor patio at the south-east corner of the building (having a width of 15.29m along Young Street and a depth of 13.31m along Ferguson Avenue) accessory to an existing restaurant notwithstanding that residential districts adjoin the lot lines along the rear (north) lot line and westerly side lot line.

NOTE:

(i) The rear lot line adjoins an "A" district and the westerly lot line adjoins an "E" district.
(ii) The site plan submitted does not accurately reflect the property lines. The lot lines do not extend to the Ferguson Avenue or Young Street sidewalks.
(iii) The outdoor patio shall not be used as a place of entertainment for the purpose of providing entertainment or amusement including live or recorded music or dance facilities.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reasons:

1. The Committee, after site inspecting the subject property and 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 (many residences as well as a public park and school are existing in this 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 as well as a public park and school is inconsistent with the general intent and purpose of the By-law and the Official Plan as referred to in Section 45 of The Planning Act, 1990.

DATED AT HAMILTON this 20th day of June, 2007

M. Dodzić (Chairman)

D. Drury

C. Lewis

V. Abramovitch

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE MAY BE FILED IS JULY 10TH, 2007.

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