SUBJECT: Application for Changes in Zoning for Lands Located at 830 - 836, 840 Upper James Street (Hamilton) (PED09232) (Ward 8)

RECOMMENDATION:

That approval be given to amended Zoning By-law Application ZAR-08-066, by J. Beume Real Estate Limited, Owner, for changes in zoning from the "HH/S-509a" (Restricted Community Shopping and Commercial) District, Modified, (Block 3) and the "HH" (Restricted Community Shopping and Commercial) District (Block 4) to the "HH-'H'/S-509b" (Restricted Community Shopping and Commercial - Holding) District, with a Special Exception, to expand the range of permitted commercial uses to include a restaurant and reduce the required parking space dimension; and from the “H/S-542” (Community Shopping and Commercial, etc.) District, Modified, (Block 2) and the “H” (Community Shopping and Commercial, etc.) District (Block 1) to the "H/S-542a" (Commercial Shopping and Commercial, etc.) District, with a Special Exception, to reduce the required parking space dimension for lands located at 830 - 836, and 840 Upper James Street (Hamilton), as shown in Appendix “A” to Report PED09232 on the following basis:

(a) That the Draft By-law, attached as Appendix “B” to Report PED09232, which has been prepared in a form satisfactory to the City Solicitor, be enacted by Council.

(b) That the proposed changes in zoning are in conformity with the Places To Grow Plan, the Hamilton-Wentworth Official Plan, and the City of Hamilton Official Plan.
EXECUTIVE SUMMARY:

The purpose of the Zoning By-law Amendment is to further modify the current zoning in order to permit a restaurant as an additional use and reduce the minimum parking space dimensions for the existing commercial plaza. The proposed By-law also prohibits drive-thru facilities on the subject lands.

A Holding Provision will be placed on the portion of the property that is currently zoned “HH” (Restricted Community Shopping and Commercial) District (Block 4 - Appendix “A”) of the commercial plaza, where the current use is the existing parking lot and landscaping. The southerly portion of the subject lands (Block 4) was previously used as a gas station. Future development of Block 4 will require the removal of the Holding Provision, and will be removed upon the submission of a signed Record of Site Condition to the City and the Ministry of Environment.

The proposal has merit and can be supported as it is consistent with the Provincial Policy Statement and Places To Grow, and conforms to the Hamilton-Wentworth Official Plan, and the City of Hamilton Official Plan. The proposal is compatible with similar commercial uses along Upper James Street, and is not anticipated to affect the surrounding residential neighbourhood to the west of the subject lands.

BACKGROUND:

Proposal:

The subject land is located on the southwest corner of Upper James Street and Mohawk Road West. Caledon Avenue is located directly to the west of the property (see Appendix “A”). The property is approximately 7,668 square metres in size and includes 830-836 and 840 Upper James Street, which were merged on title as a result of a recent acquisition of the site. There are multiple site-specific zoning regulations on the subject property. The northern portion (Block 1) is zoned “H” (Community Shopping and Commercial, etc.). The middle portion (Block 2) is zoned “H/S-542” (Community Shopping and Commercial, etc.) District, Modified, and the lower portion of the property (Block 3) is zoned “HH/S-509a” (Restricted Community Shopping and Commercial) District, Modified. Finally, 840 Upper James Street (Block 4) is currently zoned “HH” (Restricted Community Shopping and Commercial) District (see Appendix “A”).

The approval of the Zoning By-law Amendment application will result in the further modification of the established site-specific zoning on the subject lands by adding restaurants as an additional use, and excluding drive-thrus.

In addition, the amendment will reduce the parking space dimensions for all of the subject lands from 2.7 metres by 6.0 metres to 2.6 metres by 5.5 metres. This reduced parking dimension is consistent with the parking standards under the new City of Hamilton Zoning By-law No. 05-200.
Details of Submitted Application

**Location:** 830-836, and 840 Upper James Street

**Owner/Applicant:** Jack Beume Real Estate Limited

**Property Description:**
- **Frontage:** 125 metres (approx.)
- **Lot Depth:** 59 metres
- **Area:** 0.7668 ha

**EXISTING LAND USE AND ZONING:**

<table>
<thead>
<tr>
<th><strong>Existing Land Use</strong></th>
<th><strong>Existing Zoning</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject Lands:</strong></td>
<td>Commercial Retail</td>
</tr>
<tr>
<td></td>
<td>“HH” (Restricted Community Shopping and Commercial) District; “HH/S-509a” (Restricted Community Shopping and Commercial) District, Modified; “H” (Community Shopping and Commercial, etc.) District; “H/S-542” (Community Shopping and Commercial, etc.) District, Modified</td>
</tr>
</tbody>
</table>

**Surrounding Lands:**

<table>
<thead>
<tr>
<th><strong>North</strong></th>
<th><strong>Commercial Retail</strong></th>
<th><strong>G-1” (Designed Shopping Centre) District</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>West</strong></td>
<td><strong>Single Detached Dwellings</strong></td>
<td><strong>C” (Urban Protected Residential, etc) District</strong></td>
</tr>
<tr>
<td><strong>East</strong></td>
<td><strong>Commercial Retail</strong></td>
<td><strong>“H” (Community Shopping and Commercial, etc.) District; “HH” (Restricted Community Shopping and Community District) District</strong></td>
</tr>
<tr>
<td><strong>South</strong></td>
<td><strong>Commercial Retail</strong></td>
<td>“HH/S-296” (Restricted Community Shopping and Commercial) District, Modified</td>
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</table>
ANALYSIS/RATIONALE:

1. The proposal has merit and can be supported for the following reasons:
   
   (i) It is consistent with Places To Grow as it relates to accommodating local services within intensification corridors.

   (ii) It is consistent with the Provincial Policy Statement and conforms with the Hamilton-Wentworth Official Plan.

   (iii) It conforms to the “Commercial” designation of the City of Hamilton Official Plan and conforms to the “Commercial” Designation of the Yeoville Neighbourhood Plan.

   (iv) The proposal is compatible with similar commercial uses along Upper James Street, and is not anticipated to affect the surrounding residential neighbourhood.

2. This Zoning By-law Amendment application was originally submitted to modify the current zoning to permit a drive-thru restaurant for the southerly portion of the property, and to reduce the minimum required parking space dimensions throughout the entire commercial plaza.

   In response to the circulation of the original application, traffic staff advised that the proposed restaurant, with a drive-thru facility, would result in an increase in vehicular traffic entering the commercial plaza creating vehicular safety along Upper James Street. In addition, the drive-thru would require a stacking lane of 17 vehicles, which would compromise internal traffic circulation. The applicant has since amended the application to change the requested proposal for a stand-alone restaurant with a drive-thru facility, and, instead to permit only the restaurant use throughout the entire plaza with changes to the parking space dimensions.

3. The proposed modification to the “HH/S-509a” (Restricted Community Shopping and Commercial, etc.) District to permit a restaurant will allow for a more uniform list of permitted commercial uses throughout the entire commercial plaza. Currently, restaurant uses are only permitted in the other zoning districts on the property (i.e. Blocks 1, 2 and 4). Adding restaurants to the permitted range of commercial uses in the “HH/S-509a” (Restricted Community Shopping and Commercial, etc.) District (Block 3) is compatible with other commercial uses along Upper James Street. Prohibiting drive-thru facilities in the plaza will reduce the number of vehicles entering and exiting the plaza, and potential collisions along Upper James Street. Currently, the Upper James Street and Mohawk Road intersection has one of the highest collision incidences in the City of Hamilton, and prohibiting drive-thru facilities will reduce the number of vehicles from turning left into the plaza from Upper James Street.
4. The Zoning By-law Amendment will also permit the modification of Subsection 18A(7) of the City of Hamilton Zoning By-law 6593 to reduce the minimum parking dimensions from the required 2.7 metres by 6.0 metres to the new standard of 2.6 metres by 5.5 metres. This proposed dimension is consistent with the dimensions in Subsection 5.2(b) of the new City of Hamilton Zoning By-law 05-200, and will be the new parking dimension standard for other zoning districts in the future.

5. Part of the subject lands (840 Upper James Street) was formerly used as a gas station. Policy B-2.3 of the Hamilton-Wentworth Official Plan states that the identification of contaminated sites is essential. Redevelopment for Block 4 of the subject property (see Appendix “A”) must not occur until it has been demonstrated that a proposal will not put people at significant risk. As such, a Holding Provision has been included in the proposed Zoning By-law Amendment, and can only be lifted when the following requisite condition has been satisfied:

    That the owner/applicant submits a signed Record of Site Condition (RSC) to the City of Hamilton and the Ministry of the Environment (MOE). The RSC must be to the satisfaction of the Director of Planning, including an acknowledgement of receipt of the RSC by the MOE, and submission of the City of Hamilton’s current RSC administration fee.

6. The applicant submitted an application to the ERASE Study Grant Program (SGP) for the former gas station at 840 Upper James Street. Grants are available to applicants where the City pays up to half of the cost of a Phase II and/or a Phase III Environmental Site Assessment, for a total of $15,000.00 per study, or $20,000.00 per property. As of the time of preparation of this report, the applicant has not submitted the Phase II ESA Report and, as a result, the grant is outstanding.

**ALTERNATIVES FOR CONSIDERATION:**

If the application is denied, the proposed restaurant use will continue to be prohibited on the portion of the subject land that is zoned “HH/S-509a” (Restricted Community Shopping and Commercial) District (Block 3 - Appendix “B”), but will continue to be a permitted use on the rest of the subject property (Blocks 1, 2 and 4). In addition, current parking dimensions, as identified in Section 18A (7) of the City of Hamilton Zoning By-law No. 6593, will continue to apply.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: No financial implications.

Staffing: No staffing implications.

Legal: As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for a Zoning By-law Amendment.

POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement (PPS)

The application is consistent with the policies that focus growth on settlement areas (Policy 1.1.3.1). In addition, the proposal conforms to policies with regards to densities and efficient use of land and resources (Policy 1.1.3.2). Finally, the proposal conforms to policies with regards to new development in existing built-up areas, and shall have a mix of uses and densities that allow for the efficient use of land (Policy 1.1.3.7).

As the nature of the application is for a modification in zoning to expand the range of commercial uses to include restaurants and to reduce the minimum required parking space dimensions, the application is consistent with the Provincial Policy Statement.

Places To Grow

The application has been reviewed with respect to the Places To Grow Plan. The application is consistent with the policy that encourages a range and mix of employment types within complete communities (Section 2.2.2.h). As a result, the proposal conforms to the Places To Grow Plan.

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, as defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas.

However, Policy B-2.3 requires that redevelopment must not occur until it has been demonstrated that a proposal will not put people at significant risk. As a result, staff has requested a RSC be submitted before Block 4 of the subject lands can be developed because it is the site of a former gas station.

As the application is to expand the range of commercial uses to include restaurants where full municipal services are available, and to reduce the minimum required parking space dimensions, the proposal conforms to the policies of the Hamilton-Wentworth Official Plan.
City of Hamilton Official Plan

The subject property is designated “Commercial” on Schedule “A”, Land Use Concept Plan in the City of Hamilton Official Plan. The commercial plaza on the subject property falls under the “Extended Commercial” designation, and its policies apply to the subject property. The following policies apply, among others:

“2.2.19 Development within Extended Commercial areas will be through infilling and redevelopment in order to consolidate the viability of these areas and to restrict their indiscriminate extension into stable areas of non-commercial uses. Such development will only be permitted where: traffic and/or parking problems will not be created; and, on Arterial Roads identified on Schedule “F” of the City of Hamilton Official Plan.

2.2.22.i) Encourage the restoration, rehabilitation, or repair of existing storefronts and facades to complement the scale, design, and character of other Commercial developments in the area.

2.2.35.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.”

The proposal to expand the list of permitted commercial uses to include a restaurant, and the reduction in the parking space dimensions, conforms to the policies of the City of Hamilton Official Plan as the proposed development has frontage on Upper James Street, which is an arterial road, as identified in Schedule “F” of the City of Hamilton Official Plan. In addition, staff is of the opinion that expanding the list of permitted uses will not cause additional traffic and/or parking problems, as additional parking spaces are proposed for the commercial plaza, and that the existing buildings will buffer the adjacent residential uses from the parking and manoeuvring areas.

Urban Hamilton Official Plan

The New Urban Hamilton Official Plan was adopted by Council on July 9, 2009. The Plan has been forwarded to the Province for approval, and is not yet in effect. The subject lands are designated as “Primary Corridors” on Schedule “E” Urban Structure and “Mixed Use - Medium Density” on Schedule “E-1” Urban Land Use Designations.

As the application is to expand the range of permitted commercial uses to include restaurants, the proposal conforms to the policies of the Urban Hamilton Official Plan.

Yeoville Neighbourhood Plan

The subject lands are designated “Commercial”, and permit the proposal to expand the list of permitted commercial uses to include restaurants.
RELEVANT CONSULTATION:

Agencies/Departments Having no Comment or Objections

- Taxation Division, Corporate Services Department.
- Environmental Planning Section, Capital Planning and Implementation Division, Public Works Department.
- Bell Canada.

Traffic and Engineering and Operations Section, Public Works Department, has indicated that Upper James Street is a major arterial road. In addition, it has been identified as a future corridor for rapid transit initiatives.

Economic Development and Real Estate Division has indicated that the applicant has submitted an ERASE Study Grant Program (SGP) for 840 Upper James Street, and has submitted the Phase II Site Assessment. The City will provide up to 50% of the cost of Phase II and/or Phase III Site Assessment studies, for a total of $15,000.00 per study, and $20,000.00 per property.

Urban Forestry Section, Public Works Department, has indicated that there are no Urban Forestry conflicts and does not object to the Zoning By-law Amendment. However, there are Municipal Tree Assets located on the road allowance of Caledon Avenue, but they are outside of the development, and a Tree Management Plan will not be a requested condition.

Horizon Utilities has indicated that any relocation, modification, or removal of any existing hydro facilities shall be at the owner’s expense. In addition, the following has been stipulated:

- Do not excavate within two metres of hydro poles and anchors.
- Excavation within one metre of underground hydro plant is not permitted unless approval is granted by a Horizon Utilities representative, and a representative is present to provide direct supervision. Costs associated with this task shall be at the owner’s expense.
- Horizon Utilities must be contacted if the removal, isolation, or relocation of existing plant is required, and all costs associated with this work will be at the owner’s expense.

Hamilton Municipal Parking System has advised that all existing and future parking requirements are to be met on-site.
PUBLIC CONSULTATION

In accordance with the Public Participation Policy approved by Council, this application was pre-circulated to all property owners within 120 metres of the subject property, and a sign was posted in late-November, 2008. A total of 380 notices were circulated, and no letters have been received for this proposal. One resident called and inquired about the Zoning By-law Amendment application process.

Notice of Public Meeting was given in accordance with the requirements of the Planning Act through the circulation to property owners within 120 metres of the subject lands and through the posting of a sign on the property.

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
Employment opportunities are created within the community, and the proposed development is within walking distance to a residential community.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
The proposed rezoning will maintain ecological function and maintain development in the settlement areas.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Employment opportunities are created within the community.

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

:TL
Attachs. (2)
CITY OF HAMILTON

BY-LAW NO. [BILL NO.]

To Amend Zoning By-law 6593 (Hamilton), respecting lands located at 830-836, and 840 Upper James Street (Hamilton)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario 1999 Chap. 14, Schedule C did incorporate, as of January 1st, 2001, the municipality “City of Hamilton”;

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as “The Corporation of the City of Hamilton” and is the successor of 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 or the City of Hamilton;

AND WHEREAS Zoning By-law No. 6593 (Hamilton) was enacted on the 25th day of July 1950, which 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 Item [ITEM] of Report 09-[REPORT] of the Economic Development and Planning Committee, at its meeting held on the [DATE] day of [MONTH], 2009, 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 City of Hamilton (the Official Plan of the former City of Hamilton) in accordance with the provisions of the Planning Act.
NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Sheet No. W-9 of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), as amended, is further amended as follows:
   
   a) That Block 1 be rezoned from the “H” (Community Shopping and Commercial, etc.) District to the “H/S-542a” (Community Shopping and Commercial, etc.) District, Modified;
   
   b) That Block 2 be rezoned from the “H/S-542” (Community Shopping and Commercial, etc.) District, Modified, to the “H/S-542a” (Community Shopping and Commercial, etc.) District, Modified;
   
   c) That Block 3 be rezoned from the “HH/S-509a” (Restricted Community Shopping and Commercial) District, Modified, to the “HH/S509b” (Restricted Community Shopping and Commercial) District, Modified; and,
   
   d) That Block 4 be rezoned from the “HH” (Restricted Community Shopping and Commercial) District to the “HH-'H'/S-509b” (Restricted Community Shopping and Commercial - Holding) District, Modified;

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

2. That the “H” (Community Shopping and Commercial, etc.) District regulations, as contained in Section 14 of Zoning By-law No. 6593, as amended by By-law No. 77-240, is further modified to include the following special requirements:

   (i) Notwithstanding Section 18A(7) of Zoning By-law No. 6593, that every required parking space, other than a parallel parking space, shall have dimensions not less than 2.6 metres wide and 5.5 metres long.

   (ii) Notwithstanding Section 14(1) of Zoning By-law No. 6593, drive-thrus shall not be permitted.

3. That 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 “H” (Community Shopping and Commercial, etc.) District, Modified, provisions, subject to the special requirements referred to in Section 2.
4. That the “HH” (Restricted Community Shopping and Commercial) District regulations, as contained in Section 14A of Zoning By-law 6593, as amended by By-law No. 81-329, be further modified to include the following special requirements:

   (i) Notwithstanding Section 1 of By-law 81-329, a restaurant shall also be permitted, and drive-thrus shall be prohibited.

   (ii) Notwithstanding Section 18A(7) of Zoning By-law No. 6593, every required parking space, other than a parallel parking space, shall have dimensions not less than 2.6 metres wide and 5.5 metres long.

5. That the ‘H’ symbol applicable to the lands referred to in Section 1(d) of this By-law shall be removed conditional upon:

   (a) The owner/applicant submitting a signed Record of Site Condition (RSC) to the City of Hamilton and the Ministry of the Environment (MOE). The RSC must be to the satisfaction of the Director of Planning, including an acknowledgement of receipt of the RSC by the MOE, and submission of the City of Hamilton’s current RSC administrative fee.

       City Council may remove the ‘H’ symbol and thereby give effect to the “HH/S-509b” (Restricted Commercial Shopping and Commercial) District, Modified, by enactment of an amending By-law once the above condition has been fulfilled.

6. That 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 “HH/S-509” (Restricted Commercial Shopping and Commercial) District, Modified, provisions, subject to the special requirements referred to in Section 4.

7. That Zoning By-law No. 6593 is amended by adding this By-law to Section 19B as Schedule S-542a and S-509b.

8. That Sheet W-9b of the District Maps is amended by marking the lands referred to in Section 1 of this By-law as S-542a and S-509b.

9. That the Clerk is hereby authorized and directed to proceed with the giving of notice of passing of this By-law, in accordance with the Planning Act.
PASSED and ENACTED this [___] day of [___], 2009.

________________________________________________________________________
Fred Eisenberger
Mayor

________________________________________________________________________
Kevin C. Christenson
Clerk

ZAR-08-066
Appendix “B” to Report PED09232 (Page 5 of 5)

This is Schedule "A" to By-Law No. 09-
Passed the ........... day of ...................., 2009

Clerk

Mayor

Schedule "A"

Map Forming Part of By-Law No. 09-_____
to Amend By-law No. 6593

Subject Property
630-836 & 840 Upper James Street

Block 1 - Change in Zoning from the "H" (Community Shopping and Commercial, etc.) District to the "H/S-542a" (Community Shopping and Commercial, etc.) District, Modified.

Block 2 - Change in Zoning from the "H/S-642" (Community Shopping and Commercial, etc.) District, Modified to the "H/S-542a" (Community Shopping and Commercial, etc.) District, Modified.

Block 3 - Change in Zoning from the "HH/S-509a" (Restricted Community Shopping and Commercial) District, Modified to the "H/H/S-509a" (Restricted Community Shopping and Commercial) District, Modified.

Block 4 - Change in Zoning from the "HH" (Restricted Community Shopping and Commercial) District to the "HH/H/S-509a" (Restricted Community Shopping and Commercial-Holding) District, Modified.