## SUBJECT:
Application for a Further Modification to the City of Hamilton Zoning By-law No. 6593 for Lands Located at 1394 Upper Gage Avenue (PED07100(a)) (Ward 7)

### RECOMMENDATION:
That approval be given to **Amended Zoning Application ZAR-06-100, 1215477 Ontario Inc. c/o, Hussein Ghaddar, Owner**, for a further modification to the “H/S-751c” (Community Shopping and Commercial, etc.) District, Modified, to permit restaurants, including take-out and delivery food service with a maximum capacity of 30 seats per restaurant, as an additional permitted use, for the property located at 1394 Upper Gage Avenue (Hamilton), as shown on Appendix “A” to Report PED07100(a), on the following basis:

(a) That the draft By-law, attached as Appendix “B” to Report PED07100(a), which has been prepared in a form satisfactory to the City Solicitor, be enacted by Council.

(b) That the proposed change in zoning conforms to the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan.

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Lee Ann Coveyduck
General Manager
Planning and Economic Development Department

### EXECUTIVE SUMMARY:
The applicant is requesting a Zoning By-law Amendment to further modify the “H” (Community Shopping and Commercial, etc.) District to permit the additional use of restaurants, including a take-out and delivery service with a maximum of 30 seats per...
restaurant. A Public Meeting was held at the Economic Development and Planning Committee on this application on March 20, 2007, but proper notice was not provided.

The proposal has merit and can be supported as the modification in zoning is consistent with the Provincial Policy Statement, and conforms to the Hamilton-Wentworth Official Plan and the “Commercial” policies of the City of Hamilton Official Plan. The proposal efficiently uses urban land and is compatible with adjacent land uses.

BACKGROUND:

The subject lands are located at the southwest corner of Stone Church Road East and Upper Gage Avenue, and have an area of approximately 4,654 square metres. An existing one-storey variety store with a floor area of approximately 195 square metres is located on the subject lands, with a planned expansion of approximately 1,200 square metres of floor area. The intent of the planning application is to facilitate the redevelopment of the site to accommodate a commercial plaza with multiple units, including two restaurants.

On March 20, 2007, a Public Meeting at the Economic Development and Planning Committee was held for this application. Subsequent to this, City Council passed Zoning By-law No. 07-096 on March 28, 2007. However, as public notice was not given in accordance with the Planning Act for the meeting on March 20, 2007, a second Public Meeting must be held prior to an amending By-law taking effect. As a result, the new By-law will have to be amended to repeal By-law No. 07-096.

Proposal

The applicant is requesting a Zoning By-law Amendment to further modify the zoning to permit two restaurants with a maximum capacity of 30 seats per restaurant, including take-out and delivery services, in addition to the current range of commercial uses.

The proposed modifications to the “H/S-751c” (Community Shopping and Commercial, etc.) District, also include special requirements to permit a driveway, parking and manoeuvring area used in conjunction with a restaurant to be located a minimum 3.2 metres from a residential district, whereas the By-law requires a minimum distance of 12 metres; and to permit the ingress and egress driveway for a restaurant to be located a minimum 4.6 metres from a residential district, whereas the By-law requires a minimum distance of 30 metres.

Zoning By-law No. 02-225

Zoning By-law Amendment Application ZAC-02-30 rezoned the subject lands to the existing “H/S-751c” (Community Shopping and Commercial, etc.) District, Modified, to permit various retail and office uses. This application was to facilitate the expansion of commercial uses on the subject lands. A planned addition was not constructed and, as a result, the owners are now seeking to establish an additional use for the current
commercial expansion that has been dealt with through Site Plan Control Application DA-06-043.

Site Plan Control Application DA-06-043

Site Plan Application DA-06-043 details the proposed commercial plaza expansion, and was approved with conditions on September 18, 2006. The approved Site Plan illustrates the location of the existing variety store and the proposed 1,200 square metre expansion (see Appendix "C"). In addition, the plan includes a 3.0 metre wide planting strip along the southerly lot line and a 6.0 metre wide planting strip along the westerly lot line. Thirty-eight parking spaces and one loading space will be provided. At the time of Site Plan approval, the commercial uses to be contained within the proposed plaza expansion were not specified. The Zoning By-law Amendment application to permit the proposed restaurant uses was subsequently submitted in December 2006.

Location: 1394 Upper Gage Avenue

Owner: 1215477 Ontario Inc. (c/o Hussein Ghaddar)

Agent: Planning & Engineering Initiatives Ltd.

Property Description: Frontage: Approximately 46 metres (Upper Gage Avenue)

Flankage: Approximately 74 metres (Stone Church Road East)

Lot Area: Approximately 4,655 square metres

EXISTING LAND USE AND ZONING:

<table>
<thead>
<tr>
<th>Subject Lands</th>
<th>Existing Land Use</th>
<th>Existing Zoning</th>
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<tr>
<td>Variety Store</td>
<td>“H/S-751c” (Community Shopping and Commercial, etc.) District, Modified</td>
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| North | Commercial Uses (car wash, gas station, Tim Hortons) and Residential | “HH/S-887a” (Restricted Community Shopping and Commercial) District, Modified. and “RT-10/S-388” (Townhouse) District, Modified |
ANALYSIS/RATIONALE:

1. The proposed Zoning By-law Amendment has merit and can be supported for the following reasons:

   i) The proposal is consistent with the policies of the Provincial Policy Statement.

   ii) The proposal conforms to and implements the “Urban Area” policies of the Hamilton-Wentworth Official Plan and conforms with the “Commercial” policies of the City of Hamilton Official Plan.

   iii) The proposal complies with the “Commercial” designation in the approved Eleanor Neighbourhood Plan.

   iv) The proposed development is compatible with the surrounding area.

2. Modifications are required to the existing zoning in order to permit the proposed restaurant(s) as an additional use. The proposed modifications consist of the following:

   - That the restaurants, with take-out and delivery service and having a maximum capacity of 30 seats per restaurant, be permitted, whereas restaurants are not currently permitted. Furthermore, drive-thru facilities are prohibited;

   - That a parking and manoeuvring area used in conjunction with a restaurant be located a minimum 3.2 metres from a residential district, whereas the By-law requires a minimum distance of 12 metres; and,
That the ingress and egress driveway for a restaurant be located a minimum 4.6 metres from a residential district, whereas the By-law requires a minimum distance of 30 metres.

The use would serve local residents, in addition to attracting automobile traffic. The approved site plan (Appendix “C”) satisfies the By-law’s parking requirements for commercial uses, including restaurants, as only 27 parking spaces are required (minimum 1 space per 31 square metres floor area over 450 square metres floor area for the retail uses, and 1 space per 6 seats for a restaurant), and 38 spaces are provided. Sufficient buffering is maintained from the adjacent residential districts to the west and south by the proposed building location, and the incorporation of planting strips to act as screening between commercial and residential uses. It should be noted that a drive-thru facility will not be permitted. The proposed restaurant use is consistent with the range of uses that are permitted for the surrounding commercial properties. In this regard, the lands located at the northwest and southeast corners of Stone Church Road East and Upper Gage Avenue permit restaurants as-of-right within the existing zoning.

The owner is requesting that a 3.2 metre setback be provided from the residential district for the parking and manoeuvring area and that the ingress and egress driveway be located 4.6 metres from the residential district at the southeast corner of the site, and 6.0 metres from the residential district on the westerly lot line. (Appendix “C”). The approved Site Plan Application, DA-06-043, incorporates the use of planting strips to minimize any adverse impacts to the adjacent residential land use. The requested provisions would recognize an existing situation on-site.

3. There are public watermains and separate storm and sanitary sewers available to service the subject lands. All issues respecting servicing, storm water management, and road widening were dealt with under Site Plan Application, DA-06-043.

4. As a result of the preliminary circulation of the application, one letter and one e-mail were received (see Appendix “D”). Issues raised include increased noise, pollution, and traffic, and a possible liquor license being obtained. These issues are discussed below:

**Increased Noise, and Pollution**

As noted previously, the lands were recently subject to site plan approval. As a result of that review, staff ensured that adequate setbacks and planting strips were incorporated into the site design in order to minimize any impact to surrounding properties. In this regard, a 6.0 metre wide planting strip and 1.8 metre high privacy fence is to be provided along the westerly lot line, and a 3.0 metre wide planting strip and 1.8 metre high privacy fence is to be provided along the southerly lot line, all in accordance with the site-specific zoning requirements.
Increase in Traffic

With respect to an increase in traffic, the Traffic Operations and Maintenance Division has indicated that they have no comment with respect to the proposed use on the subject application. The proposed commercial plaza expansion was reviewed as part of Site Plan Application, DA-06-043 and, at that time, issues relating to site access, and visibility were reviewed. The traffic that will be generated as a result of the addition of a restaurant use(s) will not have a significant impact on the volume of traffic in the area.

Possible Liquor License

Should the owner choose to apply for and receive a Liquor License, this will require a public process in accordance with the requirements of the Liquor Control Board of Ontario. A notice is required to be posted and, at that point in time, residents would have the opportunity to comment. This process is separate from the zoning process.

ALTERNATIVES FOR CONSIDERATION:

Should the proposed application for an amendment to the Zoning By-law be denied, the uses permitted on the subject lands would be in accordance with Zoning By-law No. 02-225.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: N/A.

Staffing: N/A.

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

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.

Policy 1.1.1(c) outlines that healthy, liveable and safe communities are sustained by avoiding development and land use patterns which may cause environmental or public
health and safety concerns. Staff notes, that although the site was previously a gas station, confirmation was provided by TROW Consulting Engineering that the site was remediated. This confirmation was reviewed and cleared by City staff during the processing of Site Plan Application DA-06-043, and the confirmation of site remediation.

As the nature of the application is for a change in zoning to allow for an additional use, the proposal is consistent with the policies of the Provincial Policy Statement.

**Hamilton-Wentworth Official Plan**

The subject property is designated as “Urban Area” within the Hamilton-Wentworth Official Plan. Policy 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.

However, Policy B-2.3 states that the identification of contaminated sites is essential. Redevelopment must not occur until it has been demonstrated that a proposal will not put people in significant risk. As mentioned above, this item was addressed with the processing of Site Plan Application DA-06-043, and the confirmation of site remediation.

As the nature of the application is for a change in zoning to allow for the establishment of an additional use, where full municipal services are available, the proposal is consistent with 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 following policies from the City of Hamilton Official Plan are applicable to the proposal:

“A.2.2.14 The EXTENDED COMMERCIAL category applies to existing stretches of individually managed Commercial establishments located along Arterial Roads, serving both pedestrian and automobile borne trade. It consists of:

i) “Ribbon” commercial uses on smaller lots serving predominantly residents and pedestrians in the vicinity, with some specialized Commercial uses attracting automobile borne traffic from beyond the local areas;

A.2.2.15 Council recognizes EXTENDED COMMERCIAL areas as viable forms of Commercial development that satisfy the needs of certain businesses for visibility and accessibility.

A.2.2.16 While it is intended that any Commercial use be permitted within the EXTENDED COMMERCIAL category, it is intended that retail uses requiring large enclosed or open storage areas such as, but not limited to,
building supplies, warehouse outlets, catalogue stores serving domestic consumers, automotive sales, or other uses whose special nature or requirements of size, site and/or buildings are not conducive to locations within Ribbon Commercial areas or Shopping Centres, be located within areas of similar large scale Highway Commercial uses.

A.2.2.35 Where COMMERCIAL USES are proposed to be developed adjacent to Residential land uses, Council will be satisfied that the following provisions are adequately met:

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 proposed Zoning Amendment application is to further modify the existing “H” (Community Shopping and Commercial, etc.) District, Modified, to permit the additional use of restaurants, including take out and delivery services with a maximum capacity of 30 seats. Adequate buffering will be maintained from residential areas, as noted in the Analysis/Rationale Section of this report. As such, the proposal complies with the City of Hamilton Official Plan.

Neighbourhood Plan

The subject lands are designated “Commercial” in the approved Eleanor Neighbourhood Plan. The proposal conforms to the Neighbourhood Plan.

RELEVANT CONSULTATION:

The following Departments and Agencies had no comments or objections:

- Public Works Department (Traffic Engineering & Operations Section)
- Public Works Department (Capital Planning and Implementation Section)
- Corporate Services Department (Budgets and Finance Division)

The Hamilton Conservation Authority (HCA) has advised of the following:

The subject property is located in the southwest corner of Stone Church Road East and Upper Gage Avenue, within the Upper Ottawa sub watershed area. A recent site plan application (DA-06-043) for an expansion was reviewed by the HCA. As such, concerns regarding stormwater management were satisfactorily addressed at that time.

Parking Services, Downtown Renewal Division, has advised of the following:

The applicant must ensure that all existing and future parking requirements are met on-site, as on-street parking is not available adjacent to this property.
Public Consultation

In accordance with the Public Participation Policy that was approved by Council on May 29, 2003, this application was pre-circulated to 200 property owners within 120 metres of the subject lands. A Public Notice sign was also posted on the site. To date, staff has received one letter and an e-mail on the proposal, attached as Appendix “D”, which are addressed in the Analysis/Rationale Section of this report.

Notice of Public Meeting will be circulated in accordance with the requirements of the Planning Act.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, and 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
The environment 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

:SM
Attaches. (4)
CITY OF HAMILTON

BY-LAW NO. __________

To Amend Zoning By-law No. 6593 (Hamilton) as amended by By-law No. 02-225, and to Repeal By-law No. 07-096, Respecting the Property Located at 1394 Upper Gage Avenue

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

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

AND WHEREAS the Council of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) on the 25th day of July 1950, which by-law 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 Section ___ of Report ___ of the Economic Development and Planning Committee at its meeting held on the ___ day of ____, 2007, recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Sheet No. E-38C of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), is amended,

   (a) by changing from the “H/S-751c” (Community Shopping and Commercial, etc.) District, Modified to the “H/S-751d” (Community Shopping and Commercial, etc.) District, Modified;
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 6593, as amended by By-law Nos. 81-190, 81-244, 82-19, and 02-225, be further modified as follows:

   a) That notwithstanding Section 2(c) of By-law No. 02-225, a restaurant with take-out and delivery service with a maximum capacity of 30 seats, shall be permitted.

   b) That notwithstanding Section 18A(36)(1)(b) of Zoning By-law 6593, a distance of at least 3.2 metres shall be provided between a residential district, and the parking and manoeuvring area for a restaurant.

   c) That notwithstanding Section 18A(36)(2) of Zoning By-law 6593, a distance of at least 4.6 metres shall be provided between a residential district, and an ingress/egress driveway for a restaurant.

3. 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/S-751d” (Community Shopping and Commercial, etc.) District, Modified.

4. Zoning By-law No. 6593 (Hamilton) is amended by adding this by-law to Section 19B as Schedule S-751d.

5. Sheet Nos. E-38C of the District Maps are amended by marking the lands referred to in Section 1(a) of this by-law as S-751d.

6. The Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this by-law, in accordance with the Planning Act.

7. That By-law No. 07-096 is hereby repealed in its entirety.

PASSED and ENACTED this                  day of                      , 2007.

________________________________________________________________________
Fred Eisenberger  Kevin C. Christenson
Mayor  City Clerk

ZAR-06-100
Appendix “B” to Report PED07100(a) (Page 3 of 3)

Change in zoning from the “H/S-751c” (Community Shopping and Commercial, etc.) District, Modified to the “H/S-751d” (Community Shopping and Commercial, etc.) District, Modified

Passed the ………day of……………………….., 2007

Clerk

Mayor

Schedule "A"

Map Forming Part of By-law No. 07-

Subject Property

1394 Upper Gage Avenue

Change in zoning from the “H/S-751c” (Community Shopping and Commercial, etc.) District, Modified to the “H/S-751d” (Community Shopping and Commercial, etc.) District, Modified

Scale: N.T.S.

File Name/Number: ZAR-06-100

Date: Dec. 14, 2006

Planner/Technician: SM/MC

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Sent: Friday, January 12, 2007 12:34 PM  
To: Murray, Shannah  
Subject: zoning by-law amendment Application Zar-06-100

Hello:

I received a letter in my mailbox regarding this application. I would like a copy of the staff report. I would like to know what type of delivery food service will be located at this site. I live across form this site at 897 Stonechurch Rd east unit 16 L8W 1B2

Thanks

Dan Dudeck
Attention Shannon Murray:

Re: File # ZAR-06-100

We are opposed to the zone change of application # ZAR-06-100, 1394 Upper Sage Ave. in Ward 7. (Not Ward 6 as your letter stated.)

Presently there are three variety stores, one gas station and one Tim Hortons Drive through. We have more than our share of pollution and noise from commercial building sites in such a small confined area, besides the traffic noise and pollution from Upper Sage and Stonechurch.

We would like the zone to remain "H" (Community Shopping and Commercial, etc.) District.

We do not want a restaurant, including a take-out and delivery food service, with a maximum capacity of 30 in each building. That is 60" capacity. In the future it will probably be a liquor licensed establishment.

Santi Alfaro & Loretta Alfano.