

CITY OF HAMILTON

PLANNING AND ECONOMIC PLANNING DEPARTMENT
Planning Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 8
COMMITTEE DATE: April 17, 2012	
SUBJECT/REPORT NO: Appeal of Sign Variance Application SV-11-008 for the Property Located at 1000 Upper James Street (Hamilton) - Denied by the Director, Planning Division (PED12057) (Ward 8)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Timothy Lee (905) 546-2424, Ext. 1249
SIGNATURE:	

RECOMMENDATION

That the **Appeal of Sign Variance Application SV-11-008, Albanese Branding (c/o Judy Boswell), Applicant**, for variances to the Hamilton Sign By-law (10-197), to reduce the setback of a ground sign to all property lines from 7.9 metres to 1 metre; increase the maximum height of the ground sign from 7.5 metres to 10.6 metres; and, allow for a ground sign without displaying the municipal address of the subject property with the numerals having a minimum height of 15 cm, to permit the installation of an 'electric message display' board on the existing ground sign, for the property known as 1000 Upper James Street (Hamilton), as shown on Appendix "A" to Report PED12057, be **Denied** on the following basis:

- (a) That the proposed variances conflict with the general intent and purpose of Sign By-law No. 10-197, and do not meet the four tests for sign variances provided in Section 6.5 of the By-law.
- (b) That approval of the application could encourage other similar applications which, if approved, would undermine the intent and purpose of the Sign By-law.

EXECUTIVE SUMMARY

Variations to the City of Hamilton's Sign By-law to reduce the minimum required setback of a ground sign, increase the maximum height of a ground sign, and to permit a ground sign without displaying the municipal address of the subject property are required to permit the installation of an 'electronic message display' board on the existing ground sign, as it currently does not conform to the Sign By-law. Albanese Branding proposed to install an 'electronic message display' board on an existing ground sign located at 1000 Upper James Street (Hamilton) (see Appendix "A"). The requested variances were denied by the Director of Planning on November 24, 2011, and the application was appealed by the applicant on December 15, 2011. Staff recommends that the appeal be Denied on the basis that the requested variances conflict with the general intent and purpose of Sign By-law 10-197, do not meet the four tests for sign variances provided in Section 6.5 of the By-law, and the approval of the application could set a precedent for other future applications to install 'electronic message display' boards on 'grandfathered' ground signs.

Alternatives for Consideration - See Page 8.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: N/A.

Staffing: N/A.

Legal: N/A.

HISTORICAL BACKGROUND

Proposal

The subject lands are located on the southwest corner of Upper James Street and Jameston Avenue (see Appendix "A"). Current uses on the property include a jewellery store and a carpet store, with parking provided in front of the building. The existing ground sign is located between the Upper James Street lot line and the commercial parking lot, and is setback 1.0 metre from the front lot line, whereas a setback of 7.9 metres is required. The height of the ground sign is 10.6 metres, which exceeds the maximum allowable height of 7.5 metres. The existing sign does not display the municipal address of the property, whereas such information is required on all ground signs. Notwithstanding the non-compliance status of the sign with respect to the setbacks and height, the sign is recognized/grandfathered under Section 3.4 of the Sign By-law, as is required under Sub-section 99(1) of the Municipal Act, 2001.

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The applicant proposes to install a new double-sided 'electronic message display' board (see Appendix "B") within the existing ground sign structure. A Sign Variance application was required, as the proposed installation of the 'electronic message display' board is considered a 'substantial alteration', and variances are required to address By-law deficiencies.

City of Hamilton Sign By-law (By-law 10-197)

Hamilton City Council approved a new Sign By-law (10-197) on August 12, 2010, with amendments approved in December 2010, and September 2011, to regulate signs and other advertising devices. The new Sign By-law permits the consideration of variances under Part 6.0. As set out under Section 6.3 of the By-law, variances may be authorized by the Director of Planning. Section 6.6 of the By-law allows an applicant to appeal decisions on variance applications to the Planning Committee for a hearing. Council may uphold or vary the recommendations of the Planning Committee, and the applicant is not entitled to a further hearing before Council. The decision of Council is final.

Under Section 5.2 of the By-law, ground signs are permitted subject to provisions with respect to setbacks, height, and maximum sign area. Section 5.2(g)iii) allows for a ground sign with an 'electronic message display' board, with a maximum 50% of the sign face area, provided that no copy shall be displayed for less than three seconds and the colour and intensity of illumination does not change.

Section 3.4 of the By-law applies, as the existing ground sign is considered to have been lawfully displayed on the day of the passing of the Sign By-law. The existing ground sign may continue to be displayed without having to comply with all of the requirements of the current Sign By-law (10-197), including the provisions with respect to setbacks, height and maximum sign area, provided it is not 'substantially altered' in a manner that would bring it into non-compliance or increase its non-compliance with the Sign By-law.

Under Section 3.4 of the Sign By-law, the 'grandfathered' status of a sign is preserved, provided the sign is not 'substantially altered'. Neither the Municipal Act nor the Sign By-law defines the meaning of 'substantially altered'. However, guidance is given by describing what it is not, as follows:

- Municipal Act:

Section 99(1) prescribes that: "The maintenance and repair of the advertising device or change in the message or contents displayed is deemed not in itself to constitute substantial change."

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- Sign By-law:

Section 3.4 states that: “Anything done to preserve the condition of the sign or to prevent deterioration of a sign, including the restoration of a sign by removing or replacing worn out, missing, damaged, or broken parts, or a change in the message or copy displayed by the sign does not in itself constitute a substantial alteration.”

Legal staff has advised there is no case law interpreting the meaning of ‘substantial alteration’. However, in consultation with Legal, the following indices for assessing whether or not a sign is ‘substantially altered’ were identified:

- Building Permit:

If a Building Permit is required for an alteration to the sign, the alteration is likely ‘substantial’, subject only to the owner establishing that the alteration was for the sole purpose of maintenance/repair/restoration. In this instance, Building staff has confirmed that a Building Permit is required, subject to compliance with the regulations of the Sign By-law.

- Sign Type:

A change in the nature of the sign is indicative of a ‘substantial alteration’. In this regard, the proposed alteration would go beyond the changing of the ‘message’ or ‘copy’ displayed on the sign, and results in a change to the medium in which the ‘message’ or ‘copy’ is to be displayed. More specifically, the proposed change is from a sign panel to an ‘electronic message display’, which is highly regulated by the Sign By-law, including the displaying of the date and time.

Based on the foregoing, the proposal involving the replacement of an existing static sign face with a double-sided electronic message display, which is addressed in the Hamilton Sign By-law (10-197) as a distinct type of sign, was considered to be a ‘substantial alteration’ to an existing sign, which would terminate the grandfathered/non-compliant status of the sign under Section 3.4 of the Sign By-law, and require the sign to comply with all of the requirements of the Sign By-law (10-197). Accordingly, a variance application was required in connection to the setback, height, and display of municipal address requirements of the Sign By-law to permit the addition of a proposed ‘electronic message display’ board.

Proposed Sign Variances for Application SV-11-008

Albanese Branding have applied for variances to Hamilton's Sign By-law (10-197) to address By-law deficiencies for an existing legal non-conforming ground sign for the purpose of installing an 'electronic message display' board, which will replace a portion of the existing static sign face, as shown in the sign specifications (see Appendix "B").

The requested variances are as follows:

- (1) Reduction in the setback from all property lines from 7.9 metres (75% of the height of the ground sign) to 1 metre;
- (2) Increase in the maximum height of the ground sign from 7.5 metres to 10.6 metres; and,
- (3) Allow for a ground sign without displaying the municipal address of the subject property with the numerals having a minimum height of 15 cm.

Variances to these non-compliances with the Sign By-law are required to permit the installation of a double-sided, 'electronic message display' board, as the proposed changes to the existing ground sign are considered a 'substantial alteration', thereby terminating its grandfathered status under Section 3.4 of the Sign By-law, and resulting in the sign having to comply with all of the requirements of the Sign By-law. The existing ground sign consists of a double-sided, static sign face displaying current tenants on the subject property, as shown in Appendix "C".

Under Section 5.2.2(g)(iii), an 'electronic message display' board is permitted on a ground sign allocated to a maximum of 50% of the total sign face, provided that no copy displayed on the electronic message display board shall be displayed for less than 3 seconds, during which there shall be no movement or change in colour or intensity in illumination. An 'electronic message display' is defined as part of a sign composed of electronically controlled copy. Such animated displays would be permitted under a new relocated sign that conforms to all provisions with the Sign By-law.

A letter from the Director of Planning to deny the requested variances was sent to the applicant on November 24, 2011 (see Appendix "D"). On December 15, 2011, the applicant verbally appealed the decision to City Clerks, with a follow up letter (see Appendix "E").

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POLICY IMPLICATIONS

- N/A.

Sign By-law is regulated under **The Municipal Act**, and Provincial and Municipal Policy documents do not apply.

RELEVANT CONSULTATION

Departments/Agencies having no concerns or objections:

- Taxation Division, Corporate Services Department.
- Legal Services.

Traffic Engineering (Public Works Department)

The existing sign may be within the proposed road widening of Upper James Street.

Building Construction Section (Building Services Division)

Section 5.2.2(f) permits a ground sign with a maximum height of 7.5 metres. As the existing sign is 10.6 metres, it does not conform to the Sign By-law. In addition, the municipal address of the subject property is not displayed on the ground sign, whereas Section 5.2.2(g) requires such information to be displayed. Finally, Section 5.2.2(i) permits a ground sign with a minimum setback of 1.5 metres, or 75% of the total height of the ground sign, from all property lines. As the height of the ground sign is 10.6 metres, the setback must be 7.9 metres from all property lines.

Development Engineering (Growth Management Division)

The existing right-of-way width of Upper James Street adjacent to the subject property is 110 feet (33.5 metres). The ultimate right-of-way width is 120 feet (36.5 metres). As properties on the other side of Upper James Street have already been dedicated for road widening, a 10 foot (3.04 metres) road widening will be required to be dedicated to the City when the subject property is redeveloped.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Section 6.5 of Sign By-law 10-197 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 subject property is fully developed with an existing building with various retail establishments. The property is approximately 3,370 square metres in size, with 62.2 metres of frontage along Upper James Street and 55.3 metres of frontage along Jameston Avenue. The sign could be rebuilt to a shorter height with the municipal address displayed on the ground sign, and relocated to conform to the maximum setback requirements. With respect to the existing sign, it is 'grandfathered' in accordance with Section 3.4 of the Sign By-law. However, based on the size and layout of the site, there are opportunities to relocate the sign to ensure conformity with the Sign By-law. The attributes of the property are not any different from other commercial properties fronting along Upper James Street; therefore, there are no special circumstances or conditions that apply.

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

Comment:

The proposed replacement of a portion of the existing static sign face to a double-sided "electronic message display" would allow additional opportunities for advertising. However, the Sign By-law provides for more than sufficient opportunities for retail advertising if static sign faces are maintained. Continued use and restoration of the sign is permitted in accordance with Section 3.4 of the Sign By-law. There are no special circumstances pre-existing on the subject lands, and the refusal of the variances would not result in hardship for the applicant.

- c) Whether such special circumstances or conditions are pre-existing and not created by the sign owner or applicant.**

Comment:

The existing ground sign was built by the owners of the property approximately ten years ago, and was subject to the applicable By-laws at the time of construction. As the Sign By-law has since been adopted by Council and updated, the existing ground sign is effectively 'grandfathered' under Section 3.4 of the Sign By-law. Such status will be lost if the proposed 'electronic message display' is retrofitted into the existing ground sign. There are no special circumstances or conditions pre-existing that were not created by the sign owner.

- d) Whether the sign that is the subject of the variance will alter the essential character of the area in which the sign will be located.**

Comment:

The proposed changes to the existing ground sign could alter the essential character of the area, as it could set a precedent for other existing ground signs to install double-sided 'electronic message display' boards, which would undermine the Sign By-law.

ALTERNATIVES FOR CONSIDERATION

Option 1:

Council may decide to support the requests for Variances 1, 2, and 3, which will permit the addition of the 'electronic message display' boards to the existing ground sign. This alternative is not recommended, as approval of the application could encourage other similar applications which, if approved, would undermine the purpose and intent of the Sign By-law. In this regard, staff has received inquiries from other parties who are desirous of adding 'electronic message display' boards to existing ground signs, including a major fast food chain.

Option 2:

Council may deny the requests for Variances 1, 2, and 3, where the installation of the 'electronic message display' boards will not be permitted. This is the recommended alternative.

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CORPORATE STRATEGIC PLAN

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Healthy Community

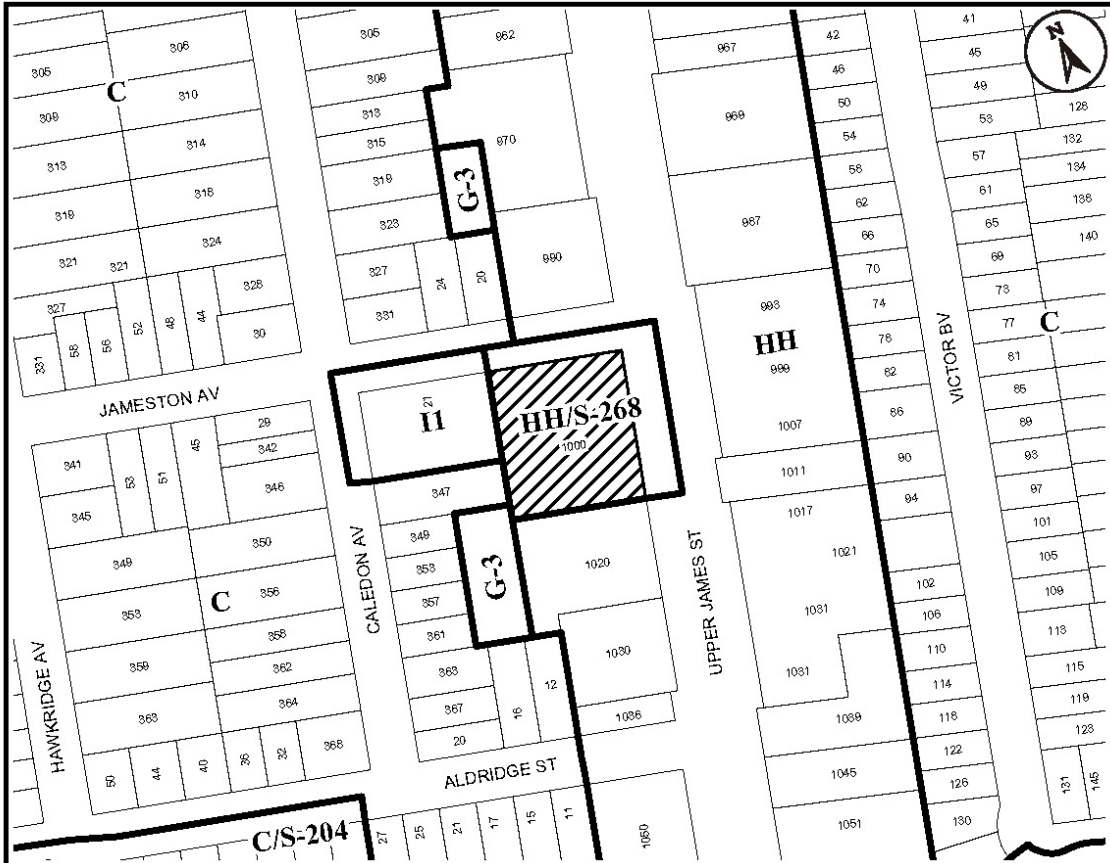
- ◆ Plan and manage the built environment.

APPENDICES / SCHEDULES

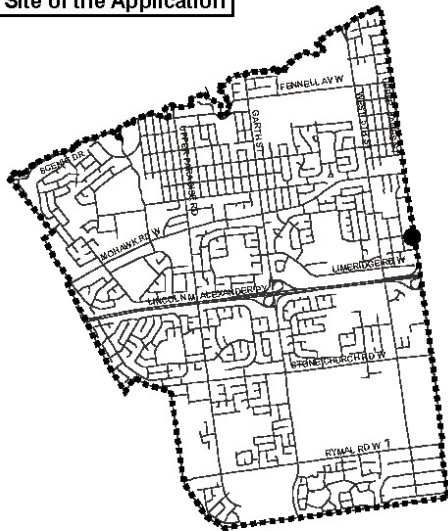
- Appendix "A": Location Map
- Appendix "B": Sign Specifications
- Appendix "C": Photos of Proposed Sign
- Appendix "D": Letter of Denial for Requested Variances to Applicant
- Appendix "E": Appeal Letter by Applicant

:TL

Attachs. (5)



● Site of the Application



Ward 8 Key Map

N.T.S.

Location Map



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
SV-11-008


Date:
February 21, 2012

Appendix "A"

Scale:
N.T.S.

Planner/Technician:
TL/NB

Subject Property

 1000 Upper James Street

05/04/2011 WED 16:20 FAX 905 528 9858

001/001



EFFORT TRUST

242 MAIN STREET EAST
HAMILTON, ON L8N 1H5

TELEPHONE: (905) 528-8956
FAX: (905) 528-2165

May 4th 2011

To: The City of Hamilton Building Department

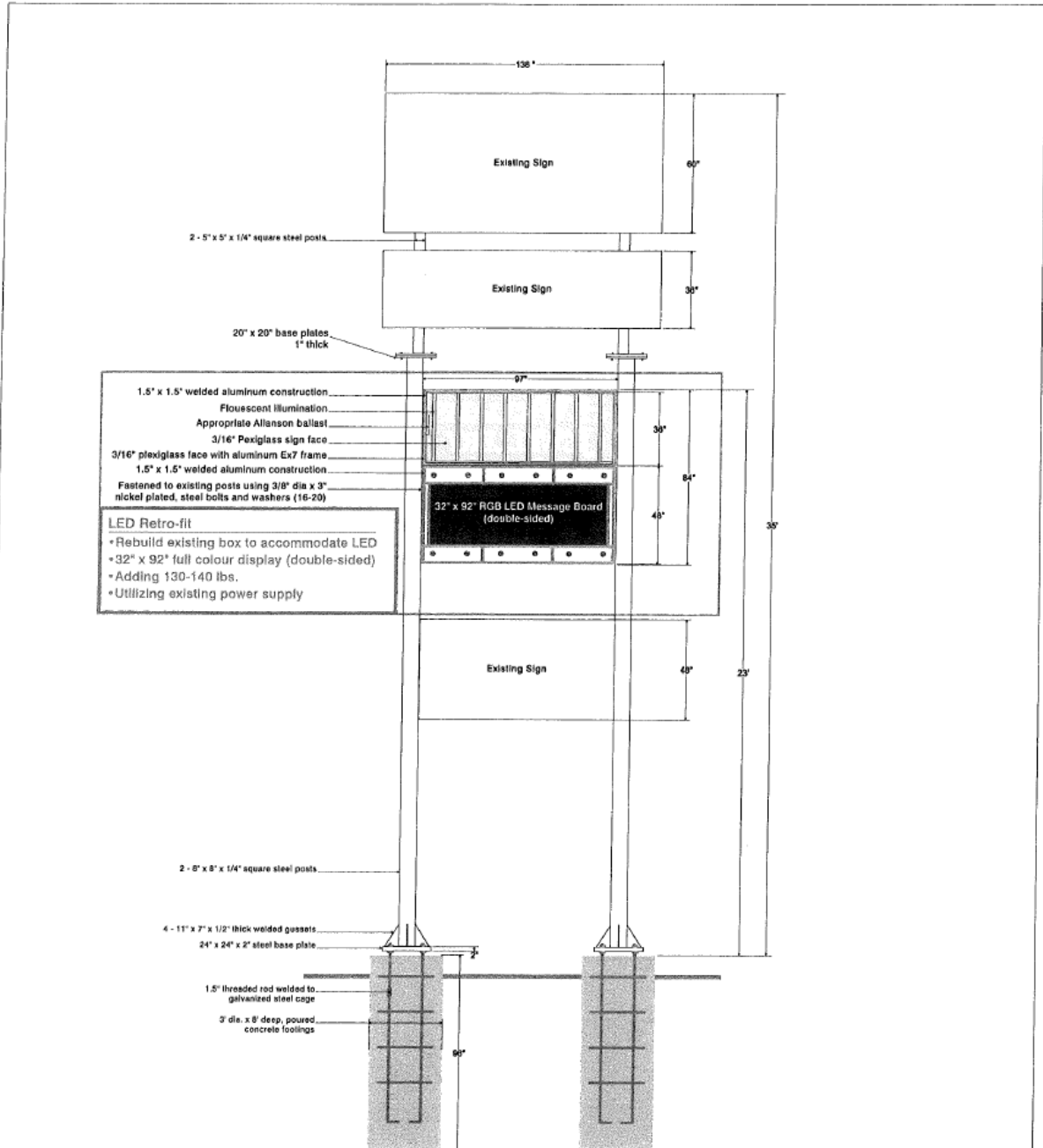
Re: Sign Permit Application


Dear Sir/Madam,

The Effort Trust Company authorizes the tenant, H. William Jewellers and the contractor, Burlington Signs National to obtain a sign permit to supply and install the proposed signage at 998 Upper James Street, Hamilton, ON.

Sincerely,
THE EFFORT TRUST COMPANY
Per;

Andrew Nevills
Commercial Property Manager
Tel: 905-528-8600 Ext. 4165
Fax: 905-528-2165



 <p>Burlington Signs NATIONAL</p> <p>1225 Advance Rd. Unit 1&2, Burlington ON, L7M 1G7</p>	<p>Name: Albanese Branding - Judy Boswell Phone: 905-526-0067 x16 Fax: - E-Mail: judy@albanesebranding.com</p>	<p>Sales: Mike Thompson Designer: Mike Thompson Date: June 14, 2011 Quote: -</p>	 <p>sac ace</p>
	<p>Telephone: 905-335-8515 Toll Free: 1-888-455-2222 Fax: 905-335-1277</p>		<p>www.burlingtonsigns.com</p>

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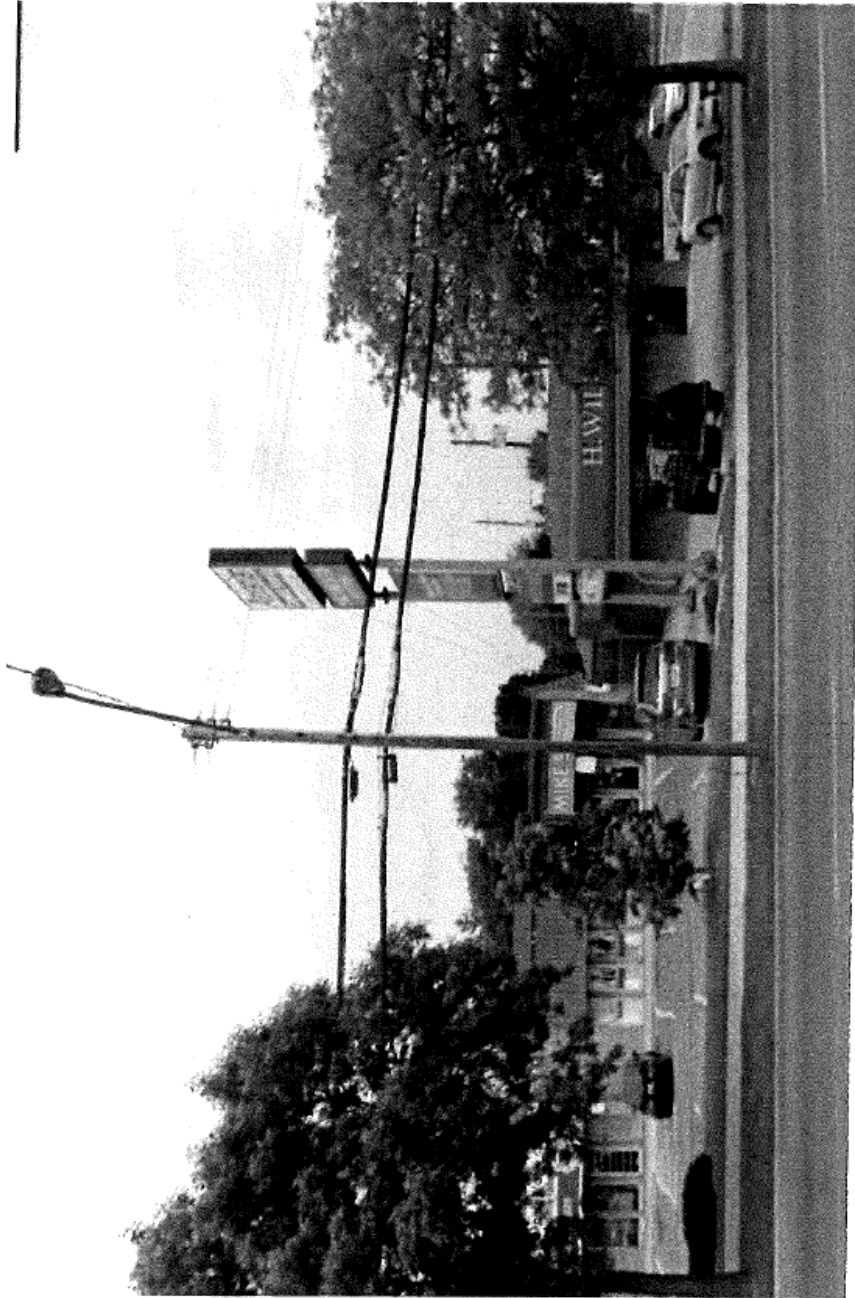
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Name:	Albanese Branding - Judy Boswell	Sales:	Mike Thompson
Phone:	905-526-0087 x16	Designer:	Mike Thompson
Fax:	-	Date:	June 14, 2011
E-Mail:	judy@albanesebranding.com	Quote:	-

sac.ace
www.burlingtonsigns.com

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998-1000 Upper James

Hamilton ON

RE: H Williams Jewellers







Hamilton

Mailing Address:
71 Main Street West, 5th Floor
Hamilton, Ontario
Canada L8P 4Y5
www.hamilton.ca

Planning and Economic Development Department
Planning Division, Development Planning, West Section
71 Main Street West, 5th Floor, Hamilton ON, L8P 4Y5
Phone: 905-546-2424 Fax: 905-540-6142

November 24, 2011

FILE: SV-11-001

Judy Boswell
Albanese Branding
435 York Boulevard
Hamilton ON L8R 3K3

Dear Madam:

RE: Sign Variance Application, 1000 Upper James Street, Hamilton

Please be advised that pursuant to By-law No. 10-197, 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 Planning, I hereby deny Sign Variance Application (SV-11-008) with respect to the following variances to permit an electronic message display within an existing sign:

- (1) Reduction in the setback from all property lines from 7.9 metres (75% of the height of the ground sign) to 1 metre;
- (2) Increase in the maximum height of the ground sign from 7.5 metres to 10.6 metres; and,
- (3) Allow for a ground sign without displaying the municipal address of the subject property with the numerals having a minimum height of 15 cm.

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 10-197. Approval of the application could encourage other similar applications which, if approved, would undermine the intent and purpose of the By-law. In accordance with Section 6.6 of the By-law, the applicant may appeal this decision to the Planning Committee within 21 days of the date of this decision to Vanessa Robicheau, Legislative Assistant, Planning Committee, City Clerks, City of Hamilton, Ontario. Should you have any questions please contact Timothy Lee at 905-546-2424 ext. 1249 or by email at Timothy.Lee@hamilton.ca.

Yours truly,

A handwritten signature in black ink, appearing to read "Paul Mallard".

Paul Mallard, **MCIP OPPI RPP**
Director, Planning Division

- cc. E. John, Senior Project Manager, Planning Division – West
S. Robichaud, Manager, Planning Division
J. Caetano, Manager of Building Construction
D. Ortiz, Manager, Building, Engineering & Zoning Section
Terry Whitehead, Councillor, Ward 8



January 11, 2012

Vanessa Robicheau
Legislative Assistant
City Clerk's Office
City of Hamilton
City Hall, 71 Main St. W., 1st Floor
Hamilton, ON L8P 4Y5

Dear Vanessa;

His letter will inform you of our desire to appeal the decision of the Planning Committee, re: Sign variance Application, 1000 Upper James Street Hamilton Ontario dated November 24, 2011.

While I appreciate that the letter states that an appeal must be made to you within 21 days of the decision, please know that I did not receive the letter at my office until December 13th, at which time I called your office and left a message. That message indicated that you were on vacation. I also called Tim Lee's office and he too was away on vacation. I then called Councillor Whitehead's office and spoke with Colleen (the Councillor was in-camera). I told her of my dilemma in not being able to reach anyone and she said that she would make some calls and get back to me. She never did.

Tim replied to my email on December 21st stating that he would inquire as to what I should do but I did not hear back from him either. I emailed him again on January 3rd and his reply indicated that I should read the letter re: timing, however he did write an email to you that day asking you to advise on next steps to which you replied on January 6th, that "This is not an appeal that City Clerk's manages" and referred me to Scott Baldry.

I replied asking how to get in touch with Scott Baldry (even though he was copied on the email he did not get in touch with me and no contact information was provided.) I then heard from Tim Lee today who said it is indeed through you and your office that I arrange the appeal. So, here it is!

I have also spoken with Councillor Whitehead today and, by copy to him, would like to request that my appeal be placed on the schedule and that you please advise me of next steps.

Kind regards,



Judy Boswell
Account Manager
Albanese Branding & Communications

cc. Terry Whitehead – Councillor Ward 8
Glen Watts, Owner – H Williams Jewellery
Jim Albanese, Owner – Albanese Branding & Communications
Paul Mallard, Director – Planning Division

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