



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	September 19, 2014
SUBJECT/REPORT NO:	Application for Amendment to the City of Hamilton Zoning By-law No. 6593 for Lands Located at 252-254 Locke Street South (Hamilton) (PED14197) (Ward 1)
WARD(S) AFFECTED:	Ward 1
PREPARED BY:	Daniel Barnett (905) 546-2424 Ext. 4445
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That approval be given to **Zoning Application ZAR-14-020, by Cynthia Bernstein, Owner**, for a modification to the “H/S-1644” (Community Shopping and Commercial) District, Modified, to the Community Shopping and Commercial “H/S-1644a” District, Modified, to permit the establishment of a 36-seat commercial outdoor licensed patio in the rear yard and to recognize the existing six-seat patio located in the northeast side yard for a total patio seating of 42 seats (Block “1”), on lands located at 252-254 Locke Street South (Hamilton), as shown on Appendix “A” to Report PED14197, on the following basis:

- (a) That the draft By-law, attached as Appendix “B” to Report PED14197, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.
- (b) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as “S-1644a”.
- (c) That the proposed change in zoning conforms to the Growth Plan for the Greater Golden Horseshoe, is consistent with the Provincial Policy Statement, and is in conformity with the Urban Hamilton Official Plan.

EXECUTIVE SUMMARY

The purpose of this application is for a modification to the “H/S-1644” (Community Shopping and Commercial) District to permit the establishment of a 36-seat commercial outdoor patio in the rear yard, accessory to the existing 30-seat licensed restaurant

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(Block “1”). The implementing by-law would also recognize the existing six-seat patio in the northeast side yard. Combined, there would be patio seating for 42 seats.

The proposal has merit and can be supported as it conforms to the Places to Grow Plan, is consistent with the Provincial Policy Statement (PPS), and conforms to the Urban Hamilton Official Plan (UHOP) and the Kirkendall North Neighbourhood Plan. The proposed rezoning is considered to be compatible with existing development in the surrounding area.

Alternatives for Consideration – See Page 11.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: None.

Staffing: None.

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

HISTORICAL BACKGROUND

Proposal

The subject lands have a lot frontage of 12.2 m on Locke Street South, and have a lot area of 527.6 sq m (see Appendix “C”). The subject property is zoned, “H/S-1644” (Community Shopping and Commercial) District, Modified, which permits a 36-seat rear yard patio as a temporary use for a period of three years (see Appendix “D”). The six-seat patio in the side yard was previously approved by the Committee of Adjustment and the implementing by-law will recognize this existing permission.

The requested Zoning By-law Amendment would permit a 36-seat rear yard patio as a permanent use and would recognize an existing six-seat patio in the northeast side yard for a total of 42 seats on Block 1, by establishing a new site-specific Community Shopping and Commercial “H/S-1644a” (see Appendix “A”).

Previous Applications

Committee of Adjustment Application A-295/09

In October, 2009, the applicant submitted an application for a minor variance to permit an outdoor patio in the rear yard of an existing licensed restaurant, notwithstanding that an outdoor patio is not permitted in the rear yard when the lot abuts a residential district. Through the review of the Minor Variance Application, staff required that the applicant submit a Minor Site Plan to detail the exact layout of the patio. The applicant submitted

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a Minor Site Plan Application on November 16, 2009. The Minor Variance Application was brought before the Committee of Adjustment on November 19, 2009, but was tabled for staff to complete the Site Plan review process. In February, 2010, the Committee of Adjustment approved the Minor Variance Application subject to a restriction that the restaurant hours of operation shall not exceed 11:00 p.m. The application for Minor Variance was appealed to the Ontario Municipal Board (OMB) by a third party.

In May, 2010, an OMB hearing was held with respect to the appeal of the Committee of Adjustment Decision on the Minor Variance application. In July, 2010, the OMB denied the application, with the exception of a variance for a six-seat outdoor licensed patio within the northeast side yard. In the decision, the OMB stated that a Zoning By-law Amendment was the most appropriate way in which to approach the proposal (see Appendix "D").

Rezoning Application ZAR-11-003

On January 11, 2011, the applicant applied for a rezoning application to establish a patio to the rear of the existing licensed restaurant. The application was first brought before Planning Committee on September 7, 2011, for a public meeting. Planning Committee tabled the application in order to permit a meeting between the Councillor, applicant, staff, and relevant stakeholders, to discuss establishing the patio under a temporary use By-law. On November 22, 2011, the application was brought back before Planning Committee, and approval was given to establish the patio as a temporary use by-law for a three year period. The temporary use by-law permissions shall expire on November 30, 2014.

Subsequent to Council passing the by-law permitting the temporary establishment of a 36-seat rear yard outdoor patio and the permitted establishment of the six-seat outdoor patio in the northeast side yard, the application for Minor Site Plan was approved February 2012.

Chronology:

- October, 2009: Applicant applied for a Minor Variance in order to establish a rear patio for an existing 30-seat restaurant.
- February, 2010: Application for Minor Variance is approved by the Committee of Adjustment but is appealed to the OMB.
- July, 2010: The OMB denied the application for the rear yard patio.
- January, 2011: The applicant submitted an application for rezoning in order to permit a 36-seat licensed outdoor patio at the rear of an existing restaurant.

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- September, 2011: The rezoning application was heard before Planning Committee and establishing the outdoor patio as a temporary use was discussed. The application was tabled for discussions on the establishment of the patio as a temporary use.
- November, 2011: Planning Committee and Council approved the establishment of a 36-seat outdoor patio as a temporary use.
- May 22, 2014: The applicant submitted an application for rezoning in order to establish the existing 36-seat rear yard patio as a permanent use.
- June 11, 2014: The application was deemed complete.
- June 26, 2014: Notice of complete application and pre-circulation was mailed to all residents within 120 m of the subject property.
- July 7, 2014: A Public Notice sign was established on the property.
- August 20, 2014: The Public Notice sign was updated identifying the date and time of the meeting.
- August 29, 2014: Notice of Public Meeting was sent to all residents within 120 m of the subject property, and the Public Notice sign was updated.

Details of Submitted Application

- Location:** 252-254 Locke Street South (Hamilton)
- Owner:** Cynthia Bernstein
- Applicant:** Stephen Bernstein
- Property Description:**
- Frontage: 12.2 m
- Lot Depth: 43.5 m
- Area: 505.9 sq m

EXISTING LAND USE AND ZONING:

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
<u>Subject Lands:</u>	Mixed-Use, Restaurant and Second Storey Residential Dwelling	“H/S-1644” (Community Shopping and Commercial) District, Modified.
<u>Surrounding Lands:</u>		
West	Single-Detached Residential Dwellings	“D” (Urban Protected Residential - 1 and 2 Family Dwellings) District.
North	Commercial Uses and Single-Detached Residential Dwellings	“H” (Community Shopping and Commercial District), and “D” (Urban Protected Residential - 1 and 2 Family Dwellings) District.
East	Duplex Dwellings	“D/S-426” (Urban Protected Residential - 1 and 2 Family Dwelling) District, Modified.
South	Mixed-Use, Commercial Uses and Second Floor Residential Dwellings	“H” (Community Shopping and Commercial) District.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Provincial Policy Statement (2014)

The application has been reviewed with respect to the PPS policies that contribute to the development of healthy and safe communities, as contained in Section 1.1.1. The subject lands are considered to be within a Settlement Area, as defined by the PPS. As such, the application is consistent with Policy 1.1.3.1 with respect to focusing growth and regeneration within existing Settlement Areas. The application will facilitate the ongoing restaurant use on the subject lands and, therefore, is consistent with the PPS.

Growth Plan for the Greater Golden Horseshoe

The application has been reviewed with respect to the Provincial Growth Plan for the Greater Golden Horseshoe (Places to Grow).

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The application conforms with the policies that manage growth within the built up area, as per the policies contained in Section 2.2.2 of the Places to Grow Plan.

Urban Hamilton Official Plan

The subject property is designated “Mixed-Use - Medium Density” in the City of Hamilton Urban Official Plan, which permit a full range of retail, service commercial, entertainment, and residential accommodation at a moderate scale. The “Mixed-Use - Medium Density” designation recognizes traditional mixed-use main streets and other large commercial areas which serve the surrounding community or a series of neighbourhoods which are intended to evolve and intensify into mixed-use, pedestrian oriented areas.

“E.4.6.5 The following uses shall be permitted on lands designated “Mixed Use – Medium Density” on Schedule E-1 – Urban Land Use Designations:

- a) Commercial uses such as retail stores, auto and home centres, home improvement supply stores, offices oriented to serving residents, personal services, financial establishments, live-work units, artist studios, restaurants, and gas bars.”

In addition, the following policies also apply:

“E.4.6.1 The range of commercial uses is intended to serve the surrounding community or series of neighbourhoods, as well as provide day-to-day retail facilities and services to residents in the immediate area. These areas shall also serve as a focus for the community, creating a sense of place.

E.4.6.2 The “Mixed-Use - Medium Density” designation shall be applied to traditional ‘main street’ commercial areas outside of the area designated “Downtown Mixed-Use”, and promote the continuation of these areas as pedestrian oriented mixed-use areas. Retail and service commercial uses are key elements in maintaining that function and ensuring the continued vibrancy of the pedestrian realm.

E.4.6.10 Permitted uses shall be located in single or mixed use buildings.”

The existing building is a mixed use building with a restaurant on the ground floor and residential unit on the second floor. The existing built form includes buildings located close to the street which contributes to the pedestrian oriented focus of Locke Street South.

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"E.4.6.24 New development shall respect the existing built form of adjacent neighbourhoods by providing a gradation in building height and densities, and by locating and designing new development to minimize the effects of shadowing and overview on properties in adjacent neighbourhoods.

E.1.0 f) Promote and support design which enhances and respects the character of existing neighbourhoods and creates vibrant, dynamic, and liveable urban places."

The existing building is two storeys in height and will not change as a result of the proposed rezoning to add an outdoor patio. The outdoor patio will not negatively impact neighbouring uses, due to the fact that the patio is setback 19 m from the residential properties to the south and southwest, which includes an alleyway and a neighbouring commercial parking area.

The properties to the west are buffered by the existing five-car garage. North of the property is a mixed use building, and to the northwest is a dwelling that is setback 12 m from the existing patio and separated by fencing and existing vegetation. In addition, noise attenuation fencing was previously required as part of the previous site plan approval, and the proposed rear patio will be restricted to a maximum of 36-seats.

Additional measures to protect neighbouring properties can be incorporated into the licensing of the restaurant, such as restricting the hours of operation for the patio. Therefore, the proposed patio will not negatively impact neighbouring development and satisfies the intent of the Urban Hamilton Official Plan.

Kirkendall North Neighbourhood Plan

The subject property is designated "Commercial" in the Kirkendall North Neighbourhood Plan.

The previous rezoning approval to establish the outdoor patio as a temporary use, re-designated the lands at the rear of the property from the "Single and Double" designation to the "Commercial" designation.

The policies of the Neighbourhood Plan state: "c) Locke and Dundurn Street Commercial Areas: In these two areas, some provision for commercial expansion has been provided for, as well as the proposed elimination of some commercial areas where it is felt that these areas will not develop commercially."

As the proposal is to permanently establish the existing outdoor patio for a restaurant, which was previously approved as a temporary use, and as the proposed outdoor patio is located entirely within those lands designated "Commercial", the proposal conforms to the policies of the Kirkendall North Neighbourhood Plan.

RELEVANT CONSULTATION

Agencies/Departments Having no Comment or Objections:

- Urban Renewal Section, Economic Development Division.
- Traffic Engineering and Operations Section, Public Works Department.
- Forestry and Horticulture Section, Public Works Department.

Hamilton Municipal Parking System

Hamilton Municipal Parking staff (HMPS) note that patios do not require additional parking and that this establishment has relied solely on on-street parking for its customers. HMPS staff did note that there is a shortage of parking in this area and it is of significant concern for local business owners and residents, and that many streets in the area already have restricted parking and may become increasingly more restrictive, further reducing long-term overflow parking in the immediate area, however it is noted that as the restaurant and outdoor patio are both existing and as no additional parking will be required for the patio staff are satisfied.

Operations and Waste Management Division, Public Works Department

Operation and Waste Management staff note that collection of garbage and recycling, organic as well as leaf and yard waste, will remain status quo. Operations and Water Management staff also noted that the City's policy discourages encroachments on City Property. Accordingly, the applicant is advised that all proposed buildings and structures (including awnings, eaves and canopies), landscaping, fencing, etc., must be constructed within the legal boundaries of the private property. Any encroachments existing as of today's date that are not permitted under any Encroachment Agreement, must be removed or the applicant must successfully apply to have the existing encroachment legitimized by applying for and receiving an Encroachment Agreement.

Public Consultation

In accordance with Council's Public Participation Policy, this application was pre-circulated to 269 property owners within 120 m of the subject lands. A Public Notice Sign was also posted on the subject lands. At the time of preparation of this Report, staff had received no letters of objection with respect to the proposed rezoning application.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1. The proposal has merit and can be supported for the following reasons:
 - i) It is consistent with the Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe, and the Urban Hamilton Official Plan.
 - ii) It is compatible with the type and form of development in the surrounding neighbourhood.
 - iii) It is an appropriate extension of an existing commercial use.
2. The subject lands are located within the Kirkendall North Neighbourhood on the west side of Locke Street South, south-west of Downtown Hamilton. There is an existing 30-seat licensed restaurant located on the first floor of a two-storey building. The restaurant also has an existing six-seat outdoor patio located in the north-east side yard near the front of building and a temporary 36-seat patio located at the rear of the building, between the building and a five-car detached garage (see Appendix “E”).

The applicant previously applied to establish the proposed patio as a permitted use at the rear of the property. However, Planning Committee, in response to concerns from neighbouring interested parties, permitted the patio to be established only as a temporary use for a period of three years. Through the previous rezoning process, the zoning of the subject property was amended from the "H" (Community Shopping and Commercial) District at the front of the property, and "D" (Urban Protected Residential - 1 and 2 Family Dwelling) District Zoning at the rear of the property, to the "H/S-1644" (Community Shopping and Commercial) District for the entire property.

The current "H/S-1644" District established two blocks to ensure that the patio was appropriately located onsite, and that the patio was restricted to a specific size and capacity. In addition, the rezoning ensured that no commercial activity other than an existing accessory garage for the parking of vehicles was permitted to be established at the rear of the lot, in order to better protect neighbouring residential properties. Staff are proposing to maintain the two blocks in the new site-specific by-law to recognize the existing six-seat patio in the northeast side yard and establish the proposed 36-seat outdoor rear yard patio as a permanent use on the lands shown as Block “1”.

Patio Located In Rear Yard (Block 1)

Section 18.(11).b i) of Hamilton Zoning By-law No. 6593, as amended by By-law No. 09-210, states that no outdoor patio shall be permitted on a lot where any lot line abuts a Residential Zone, or where such lot is separated from a Residential Zone by a laneway. An outdoor patio, by definition, refers to a licensed facility where alcohol is sold/served. The rear lot line and a portion of the northerly side lot line adjoin a residential district and, therefore, the applicant has requested an exemption from Section 18.(11).b i). The proposed exemption can be supported for the following reasons:

- i) The proposed rear yard patio will be restricted to a maximum of 36-seats.
- ii) The existing five car garage will buffer and screen the adjoining residential properties located to the north and west of the subject property as well as those residential properties located to the south-west.
- iii) A 1.8 m acoustical barrier has been provided which surrounds the proposed outdoor patio. This acoustical barrier provides additional buffering and screening for the adjoining residential properties located to the north and west side of the subject property, as well as, those residential properties located on the other side of the alleyway and commercial property, south of the subject property.
- iv) The residential properties located to the south and south-west of the subject property are setback a significant distance, approximately 19 m (62 ft), and will be separated by an alleyway and the private parking area of an existing commercial property.

Patio Located in the North-East Side Yard (Block 1)

As the subject property abuts a residential district to the rear and a portion to the north, a patio is only permitted in the front yard. The existing six-seat patio located near the front of the building is partially located within the side yard which the By-law also does not permit. The OMB upheld the Committee of Adjustment approval of the six-seat licensed outdoor patio within the north-east side yard, on the basis that the patio is located at the front of the building and the building buffers the residential properties to the rear of the property. The proposed By-law modification will carry forward the Committee of Adjustment/OMB previous approval for the six-seat outdoor patio located in the northeast side yard.

3. The proposed outdoor patio previously received Site Plan Approval (MDA-09-114) for the design and layout for the proposed patio. Through the Site Plan Approval process it was noted that a bar, outside sound system, and outside music are prohibited from being located on the outdoor patio in order to reduce noise, as well as, other impacts on adjoining residential properties. In addition, it is noted that By-law No. 09-210 states that a portion of a lot on which the outdoor patio is permitted, shall not be used for commercial entertainment or commercial recreation, including live or recorded music or dancing facilities.

The Site Plan Approval process did not permit any seat to be located between the garage and the northerly property line, and established a planting area between the garage and the northerly property line, which provides additional buffering and screening for the residential properties located at the north side of the subject property (see Appendix "E").

The previous Site Plan Approval also restricted the principal entry and exit of patrons to be from Locke Street South and away from abutting residential properties, thereby further separating the patio from the adjoining residential properties.

Finally, the previous Site Plan Approval identified the existing five-car garage located to the rear of the patio, and required that a 1.8 m high noise attenuation fence be established (see Appendix "E"). As no changes are being proposed to the layout of the proposed outdoor patio no new site plan approval is required for the proposal, however it is noted that the applicant is still required to maintain the patio in accordance with the previous site plan approval.

ALTERNATIVES FOR CONSIDERATION

If the proposed rezoning application is not approved, the applicant would still be permitted to operate a licensed restaurant within the existing building with a total of 30 seats, and a licensed patio at the front of the restaurant on the north-east side yard with a total of six seats. The rear yard patio would be permitted to continue until the temporary use By-law lapses on November 30, 2014.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.1 Continue to grow the non-residential tax base.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

- 2.3 Enhance customer service satisfaction.

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

Strategic Objective

- 3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A”: Location Map
- Appendix “B”: Draft By-law and Schedule A Map
- Appendix “C”: Survey Plan
- Appendix “D”: OMB Decision
- Appendix “E”: Site Plan
- Appendix “F”: Previous Temporary Zoning By-Law