



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	September 19, 2014
SUBJECT/REPORT NO:	Sign Variance Application SV-14-007 for the Property Known as 900 Woodward Avenue, Hamilton, Denied by the Director, Planning Division, and Appealed by the Applicant (PED14217) (Ward 4)
WARD(S) AFFECTED:	Ward 4
PREPARED BY:	Danielle Beck (905) 546-2424 Ext. 1285
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That the Appeal of Sign Variance Application SV-14-007 dated August 15, 2014, by Jeremy Kramer of Kramer Design Associates (KDA), to construct one Ground Sign to advertise Tim Horton's Field, the Hamilton Tiger Cats and other events, for the property located at 900 Woodward Avenue (Hamilton), as shown on Appendix "A" to Report PED14217, be **DENIED** on the following basis:

- (a) That the requested variances are not in keeping with the intent of Sign By-law No. 10-197;
- (b) That the requested variances do not meet the tests of Sign By-law No. 10-197;
- (c) That the requested variances facilitate a ground sign that does not comply with Hamilton Zoning By-law No. 05-200;
- (d) That the proposed sign is not supported by the Ministry of Transportation Ontario (MTO);
- (e) That the proposed sign is not supported by the Hamilton Conservation Authority (HCA).

EXECUTIVE SUMMARY

The applicant submitted Sign Variance Application SV-14-007 on June 12, 2014 and was subsequently deemed complete on June 18, 2014. The application proposes to construct one ground sign to advertise Tim Horton's Field, the Hamilton Tiger Cats and other events. The sign will be located at the northeast corner of the subject property, along the Queen Elizabeth Way (QEW) by the Burlington Street exit ramp to the QEW Niagara (see Appendix "B"). The applicant advises in their Sign Variance Application that the variances are required for size, location and design, as the subject lands are a gateway location which assists in the promotion of the Hamilton Tiger-Cats Football Club, and they further advise that there is a need to maximize visibility to vehicular traffic from the QEW in this location.

Alternatives for Consideration – See Page 16

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: None.

Staffing: None.

Legal: The application is under the Municipal Act, and there are no requirements for a Public Meeting. By-law No. 10-197 requires the City Clerk to notify the applicant once a hearing date before the Planning Committee has been fixed.

HISTORICAL BACKGROUND

On August 12, 2010, Council approved Sign By-law No. 10-197. Part 6.0 of By-law No. 10-197 provides the regulations in dealing with Variances, including the delegated approval authority, what the City of Hamilton shall have regard for when reviewing Sign Variance Applications (Section 6.5), and the process of appealing the Sign Variance Application decision (Section 6.6) (see Appendix "C").

In April 2014, staff met with the applicant, owners, and other representatives to discuss the submission of a Sign Variance Application for the proposed sign and to discuss the validity of the proposed variances.

On June 12, 2014, staff received the application for a sign to construct one Ground Sign advertising Tim Horton's Field, the Hamilton Tiger Cats and other Hamilton events (see Appendix "D").

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The requested variances are as follows:

1. That notwithstanding Section 5.1.1(a) of Hamilton Sign By-law No. 10-197, to permit a sign with a video screen or any flashing, kinetic, or illusionary motion whereas Hamilton Sign By-law No. 10-197 does not permit any sign with a video screen or any flashing, kinetic, or illusionary motion;
2. That notwithstanding Section 5.1.1(f) of Hamilton Sign By-law No. 10-197, to permit a sign to be displayed on a property within 400 m of the Queen Elizabeth Way, whereas Hamilton Sign By-law No. 10-197 does not permit a sign to be displayed on a property within 400 m of Highway 403, the Queen Elizabeth Way, the Lincoln M. Alexander Parkway or the Red Hill Valley Parkway;
3. That notwithstanding Section 5.2.2(e) of Hamilton Sign By-law No. 10-197, to permit a double faced ground sign with a sign area of 138 sq m per sign face for a total of 276 sq m, whereas Hamilton Sign By-law No. 10-197 does not permit a double faced ground sign to exceed a total sign face area of 36 sq m;
4. That notwithstanding Section 5.2.2(f) of Hamilton Sign By-law No. 10-197, to permit a ground sign to have a maximum height of 19.57 m, whereas Hamilton Sign By-law No. 10-197 does not permit a ground sign to exceed a maximum height of 7.5 m;
5. That notwithstanding Section 5.2.2(g)(i) of Hamilton Sign By-law No. 10-197, to exempt the proposed ground sign from the provisions of Sign By-law No. 10-197 that require municipal numbers and the municipal address number of the property on which the ground sign is displayed to be shown at the top or bottom in numerals that are a minimum height of 15 cm;
6. That notwithstanding Section 5.2.2(g)(ii) of Hamilton Sign By-law No. 10-197, to exempt the proposed ground sign from having to provide one or more of the following copy that is a minimum height of 15 cm: 1. the name of the business; 2. the registered trademark of the business; 3. the ownership of the business; or 4. the name of the activity, product or service available, whereas Hamilton Sign By-law No. 10-197 requires a ground sign to include one or more of the following copy that is a minimum height of 15 cm: 1. the name of the business; 2. the registered trademark of the business; 3. the ownership of the business; or 4. the name of the activity, product or service available;
7. That notwithstanding Section 5.2.2(g)(vi) of Hamilton Sign By-law No. 10-197, to permit a ground sign that is not within the Downtown Community Improvement Area, Business Improvement Area, the Ancaster Village Core Area, or the Glanbrook Village Core Area, to allocate a maximum 36% of the sign area or

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50.14 sq m, whichever is lesser, except for an electronic message display, to advertise a business that is not on the property on which the Ground Sign is displayed or an activity, product or service that is not available on the property, whereas Hamilton Sign By-law No. 10-197 requires a ground sign that is not within the Downtown Community Improvement Area, Business Improvement Area, the Ancaster Village Core Area, or the Glanbrook Village Core Area, may allocate a maximum 25% of the sign area or 1.2 sq m, whichever is lesser, except for an electronic message display, to advertise a business that is not on the property on which the Ground Sign is displayed or an activity, product or service that is not available on the property; and,

8. That notwithstanding Section 5.2.2(i) of Hamilton Sign By-law No. 10-197, to permit a ground sign to be located within 4.4 m from any lot line whereas Hamilton Sign By-law No. 10-197 permits a ground sign to be located within 1.5 m or a distance equal to 75% of the height of the Ground Sign, whichever is greater, of any property line.

The Sign Variance Application was denied by the Director, Planning Division, on August 13, 2014. The reasons for refusal were that: the proposed variance did not maintain the general intent and purpose of the Sign By-law; did not meet the four tests for sign variances provided in Section 6.5 of By-law No. 10-197 (see Appendix "C"); the requested variances facilitate a ground sign that does not comply with Hamilton Zoning By-law No. 05-200; the proposed sign is not supported by the Ministry of Transportation Ontario (MTO); and, the proposed sign is not supported by the Hamilton Conservation Authority (HCA).

Pursuant to Section 6.6 of the Sign By-law, the applicant has appealed the decision of the Director, Planning Division, and has requested that the variance application be brought to the Planning Committee for their review (see Appendix "E").

On August 13, 2014, the Sign Variance Application was denied by the Director, Planning Division, and notice sent to the applicant advising them of the decision. On August 11, 2014, the applicant appealed the denial decision by the Director, Planning Division, requesting that the proposed Sign Variance Application be considered by the Planning Committee (see Appendix "E").

Details of Submitted Application

Location:	900 Woodward Avenue, Hamilton
Owner	City of Hamilton
Applicant:	Kramer Design Associates

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permit for a billboard sign that is located within 400 m of the Queen Elizabeth Way (QEW).

For reference, Subsection 2.2.4 states:

“This By-law does not apply to signs displayed, or permitted to be displayed by federal, provincial or municipal governments, a conservation authority or other local board as defined in the Municipal Act, 2001, including, but not limited to, signs required by a federal or provincial statute or regulation or by a municipal by-law, such as: a traffic sign; a street name sign; a permanent sign displayed on a street to inform the public of the location of Business Improvement Areas, public buildings, hospitals, public libraries, institutions, places of worship, parks, recreational or educational facilities; a sign designating a public library, a public community centre, a public arena; a sign required by the City to inform the public of planning applications submitted under the Planning Act; a Tourism Ontario Destination sign; a Trailblazer sign and a sign displayed for the purposes of public safety or convenience.”

The proposed ground sign does not meet any of the requirements noted above to be exempt from the By-law as the sign is advertising for privately owned lands and privately operated business and events; it is not a required sign by the federal, provincial or municipal governments, a conservation authority or other local board; and, is not a Tourism Ontario Designation sign.

RELEVANT CONSULTATION

Department/ Agencies having no comments or concerns:

- Growth Management (Development Engineering)
- Community Planning
- Development Planning (Heritage)

Building Services Division (Building Construction Section) has provided the following comments:

1. According to Section 5.1.1.(a) of the Sign By-law 10-197, “**(a) any sign with a video screen or any flashing, kinetic, or illusionary motion except an electronic display as permitted under this By-law.**” The Proposed Ground Sign appears to have an electronic display. Therefore it does conform to the Sign By-law 10-197.
2. According to Section 5.1.1.(c) of the Sign By-law 10-197, “**(c) any sign displayed within a visibility triangle.**” The Proposed Ground Sign appears

to be located outside any visibility triangles. Therefore it does conform to the Sign By-law 10-197.

3. According to Section 5.1.1.(f) of the Sign By-law 10-197, **“(f) any sign within 400.0 m of the right of way of Highway 403, The Queen Elizabeth Way, the Lincoln M. Alexander Parkway or the Red Hill Valley Parkway that is visible from the travelled portion of the right of way.”** The Proposed Ground Sign is only 65.56 m from the right of way of The Queen Elizabeth Way. Therefore it does not conform to the Sign By-law 10-197.
4. According to Section 5.2.2.(e) of the Sign By-law 10-197, **“(e) maximum sign area of 0.3 m² for every 1.0 m of frontage along which the Ground Sign is located, not to exceed a total sign area of 18.0 m² for a single-faced Ground Sign or 36.0 m² for a double or multi-faced Ground Sign.”** Each sign face of the proposed Ground Sign, which does not front onto Woodward Avenue, has an area of 138.0 sq m per sign face for a total of 276.0 sq m. Therefore it does not conform to the Sign By-law 10-197.
5. According to Section 5.2.2.(f) of the Sign By-law 10-197, **“(f) maximum height of 7.5 m.”** The proposed Ground Sign is 19.57 m in height. Therefore it does not conform to the Sign By-law 10-197.
6. According to Section 5.2.2.(g)(i) of the Sign By-law 10-197, **“(g)(i) includes the municipal address number of the property on which the Ground Sign is displayed shown at the top or the bottom in numerals that are a minimum height of 15.0 cm.”** The proposed Ground Sign does not show any municipal numbers at the top or bottom. Therefore it does not conform to the Sign By-law 10-197.
7. According to Section 5.2.2.(g)(ii) of the Sign By-law 10-197, **“(g)(ii) includes one or more of the following copy that is a minimum height of 15.0 cm: 1. The name of the business; 2. The registered trademark of the business; 3. The ownership of the business; or 4. The name of the activity, product or service available.”** The proposed Ground Sign contains all of the required information. Therefore it does conform to the Sign By-law 10-197.
8. According to Section 5.2.2.(g)(iii) of the Sign By-law 10-197, **“(g)(iii) may allocate a maximum 50% of the sign face to a readograph or electronic message display provided that no copy displayed on an electronic message display shall be displayed for less than three seconds, during which there shall be no movement or change in colour or intensity of illumination.”** The proposed Ground Sign allocates only 9.7% of each sign face to an electronic message display. Therefore it does conform to the Sign By-law 10-197.

9. According to Section 5.2.2.(g)(vi) of the Sign By-law 10-197, **“(g)(vi) for a Ground Sign that is not within the Downtown Community Improvement Area, Business Improvement Area, the Ancaster Village Core Area, or the Glanbrook Village Core Area, may allocate a maximum 25% of the sign area or 1.2 m², whichever is lesser, except for an electronic message display, to advertising a business that is not on the property on which the Ground Sign is displayed or an activity, product or service that is not available on that property.”** With the exception of the 13.38 sq m electronic message display on each sign face, the proposed Ground Sign allocates 50.14 sq m of each sign face to advertising. Therefore it does not conform to the Sign By-law 10-197.
10. According to Section 5.2.2.(h) of the Sign By-law 10-197, **“(h) not within 15.0 m of a traffic control device.** The proposed Ground Sign is not within 15.0 m of a traffic control device. Therefore it does conform to the Sign By-law 10-197.
11. According to Section 5.2.2.(i) of the Sign By-law 10-197, **“(i) not within 1.5 m or a distance equal to 75% of the height of the Ground Sign, whichever is greater, of any property line.”** The location of the proposed Ground Sign should be 75% of the maximum height of 19.57 m which works out to be 14.68 m from any property line. However, it appears that it is only 4.4 m from the rear property line. Therefore it does not conform to the Sign By-law 10-197.
12. According to Section 5.2.2.(k) of the Sign By-law 10-197, **“(k) where more than 1 Ground Sign is displayed along a frontage, not displayed within 200 m of another Ground Sign along the same frontage.”** The proposed Ground Sign appears to be the only Ground Sign on the property. Therefore it does conform to the Sign By-law 10-197.

Ministry of Transportation:

The Ministry of Transportation Ontario (MTO) was circulated the Sign Variance Application and provided comments with respect to the location of the proposed sign. The Ministry of Transportation **will not** issue a permit for any billboard (third party sign) which is visible and located within 400 m of the limit of a Class 1A highway (i.e. QEW/403).

Only location signs (which either names or identifies the property, occupant(s) or owner(s) or a business conducted on the property, or advertises a product or service(s) available upon the property, or conveys a message placed solely for guidance on the property) are permitted, provided they meet all requirements of the Ministry's *Corridor Signing Policy* and must obtain all municipal approvals. The MTO's comments are attached as Appendix "G".

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Based on the comments provided by MTO, the Sign Variance Application was not supported by staff.

Hamilton Conservation Authority (HCA):

The proposed location for the sign puts it approximately 160 m from the nearest boundary of the Van Wagner's marsh wetland. The base of the sign is roughly 64 sq ft. HCA policy does not require regulatory approval for accessory structures under 108 sq ft. However, the proposed sign location is within both the Regulatory Floodplain and erosion hazard (meander belt) of Redhill Creek.

It appears that Van Wagner's ponds and the wetland west of the QEW are part of an Important Bird Area as defined by Bird Studies Canada under the international Important Bird Area Program. Generally this is a designation that relates to water birds that congregate in Lake Ontario in late winter and early spring. The marsh area and Van Wagner's Ponds are important to some of these waterfowl. Natural spaces close to Lake Ontario are used by a large number of species that migrate along the lake in fall and spring. The number of these natural habitats is low along the Hamilton shoreline which increases the importance of those remaining.

The proposed signs look as though it will be one of the largest (tallest) structures in the local area. It will also be brightly lit. The height and brightness of the sign are a concern. As indicated above, this is a migratory bird route with many different species being recorded in this area over a number of years during migration. In addition, some insects also migrate, although their migratory pathways are lesser known. Both of these groups of species can be distracted on their migration by large bright lights. This increase in the stress on an already exhausted bird or insect can lead to death.

Therefore, it is HCA's recommendation that the sign be moved to a different location away from the Van Wagner's Ponds and marshes and also not near Windimere Basin. The HCA's comments are attached as Appendix "H".

Based on the comments provided by the HCA, the Sign Variance Application was not supported by staff.

Building Services (Zoning):

The proposed sign does not appear to be located within required parking spaces, loading areas, manoeuvring spaces, access driveways, planting strips, landscaped areas or the road allowance.

Be advised that the “M6” zone requires a 3.0 m wide landscaped area to be provided and maintained abutting a street except for points of ingress and egress. For reference, “landscaped area” and “landscaping” are defined by Hamilton Zoning By-law 05-200 as:

“Landscaped Area”

“Shall mean any portion of a lot which:

- a) Has no building thereon;*
- b) Is not used for parking, access to parking, driveways or loading space;*
- c) Is used for the purpose of landscaping.”*

“Landscaping”

“Shall mean outdoor space for use, enjoyment and recreation and shall include natural vegetation areas and constructed areas such as patios, decks, playgrounds, pathways, outdoor recreational amenities, fencing, decorative architectural features and retaining walls.”

(Note: The proposed Ground Sign is not located within the required 3.0 m of “landscaped area” and therefore complies with the Landscaped Area requirements of the M6 Zone.)

Pursuant to Section 4.23 a) of Hamilton Zoning By-law No. 05-200, the following special setbacks shall apply:

“Setback from a Provincial Highway Right-of-Way”

“All buildings, structures, required parking areas and storm water management facilities located on a property shall be setback a minimum of 14.0 metres from a Provincial Highway Right-of-Way.”

The proposed ground sign is shown to be 4.4 m from a Provincial Highway Right-of-Way (being the Q.E.W.), whereas the zoning By-law requires a minimum setback of 14.0 m. Therefore, the sign does not comply with the Zoning By-law. A successful application for minor variance will be required in order to permit the proposed sign to be located within 4.4 m from a Provincial Highway Right-of-Way (being the Q.E.W.).

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1. The lands are owned by the City of Hamilton which encompass a large land area containing the Woodward Avenue wastewater treatment plant and Hamilton Museum of Steam and Technology and are bounded by Woodward Avenue (west), the QEW (east), Brampton Street (south) and Burlington Street (north). There are no ground signs existing on the eastern portion of the property. There are existing ground and directional signs located on the western property line

along Woodward Avenue for the wastewater treatment plant and Hamilton Museum of Steam and Technology.

2. The subject Sign Variance Application requested eight variances, and the following is an analysis of the variances requested:

Variance 1 is required as a result of the location of the proposed sign abutting public highways. Woodward Avenue is under the jurisdiction of the City of Hamilton and the QEW is under the jurisdiction of the Province of Ontario. The proposed sign will have electronic displays and may illuminate the adjacent public highways. The proposed electronic sign has the potential to be a distraction to drivers and may negatively impact the natural habitat of the animals located within the Windermere Basin and waterway along the QEW. Based on the foregoing, staff are of the opinion that the variance cannot be supported.

Variance 2 is required as a result of the location of the proposed sign abutting the QEW. The Ministry of Transportation Ontario (MTO) was circulated the Sign Variance Application because this variance impacts the 400.0 m restriction within MTO jurisdiction. The MTO provided comments with respect to the proposed sign, and advised that the portion of the subject lands that are parallel to the QEW would not be permitted to have any signs located within 400.0 m and that they would not issue the required permit. Based on the foregoing, staff are of the opinion that the variance cannot be supported.

Variance 3 is required as a result of the proposed double-faced, ground sign sizes allocated to electronic display. Due to the size of the property and the intended audience/clients, the variance requests larger sign faces to accommodate the large traffic volumes on the QEW. The proposed ground sign is more than seven times the permitted size for a ground sign. Based on the foregoing, staff are of the opinion that the variance is not in keeping with the intent of the Sign By-law and, therefore, the variance cannot be supported.

Variance 4 is required as a result of the proposed height of the ground sign. The height of the proposed ground sign is taller than permitted by the Sign By-law. The size of the property and the proximity of the property to the highway audience is the main consideration for the proposed variance. At 19.57 m, the sign height proposed is more than double what the Sign By-law permits (i.e. 7.5 m). Based on the foregoing, staff are of the opinion that the variance cannot be supported.

Variance 5 is required to address the fact that the proposed sign does not have a municipal number located on the sign. The purpose of a ground sign is to identify the location of the business on the subject property. Without an address, there may be some confusion as to where the business may be located within the vast

City owned lands, as the ground sign may not be located on the lands where the physical business is. Staff are of the opinion that the proposed ground sign functions as a billboard sign, advertising events and companies that are not located on the subject lands, and does not advertise the address, or primarily relate to the activities on the subject lands (i.e. Woodward Avenue wastewater treatment plant and Hamilton Museum of Steam and Technology). Policy 5.10.2 (j) of Hamilton Sign By-law No. 10-197 states that a billboard sign is only permitted “on vacant, undeveloped property, zoned industrial or commercial”.

The definition of a Billboard Sign is “a sign that is free standing and is supported by a structure secured to the ground and which is not supported by any building or other structure, displays copy advertising goods, products, or services not sold or offered on the property where the sign is displayed and is either single faced or double faced but does not include a Ground Sign”.

The definition of a Ground Sign is “a sign that is free standing and is supported by a structure secured to the ground and which is not supported by any building or structure but does not include a Billboard Sign”.

As the site is developed and is home to the Woodward Avenue wastewater treatment plant and Hamilton Museum of Steam and Technology it is not located on a vacant, undeveloped property, and would not meet the requirements of a billboard sign. Therefore, the variance as applied for cannot be supported since the requested sign is not permitted as a ground sign or billboard sign.

Variance 6 is required to address the proposed sign as it relates to the business advertisement requirement of the Sign By-law. The purpose of a ground sign is to advertise the business(es) and events that occur on the subject lands. Even though the rendering delineates the City of Hamilton logo and the sign is located on City of Hamilton lands (see Appendices “A” and “D”), the remainder of the advertisements do not include the uses on the subject lands. Staff are of the opinion that the proposed ground sign functions as a billboard sign, advertising events and companies that are not located on the subject lands. Policy 5.10.2 (j) of Hamilton Sign By-law No. 10-197 states that a billboard sign is only permitted “on vacant, undeveloped property, zoned industrial or commercial”. This policy is intended to permit billboard signs to advertise businesses and uses that are not provided on the subject lands, as the lands are required to be vacant and undeveloped. Therefore, the variance as applied for cannot be supported since the requested sign is not technically a ground sign.

Variance 7 is required to permit 36% of the sign face area to be used for electronic display for an activity, product or service that is not available on the property. The By-law permits ground signs to have a maximum 25% of the sign area or 1.2 sq m, whichever is lesser, for electronic message display to be used

for an activity, product or service that is not available on the property for a ground sign that is not within the Downtown Community Improvement Area, Business Improvement Area, the Ancaster Village Core Area, or the Glanbrook Village Core Area. Staff are of the opinion that the proposed ground sign functions as a billboard sign, advertising events and companies that are not located on the subject lands. Policy 5.10.2 (d) and (e) of Hamilton Sign By-law No. 10-197 states that a billboard sign is permitted if it is “not animated, except for a Tri-Vision Billboard” or “may allocate a maximum 50% of the sign face to a readograph”. The proposed 36% electronic display message does not meet the requirements of the billboard policies. Furthermore, as the applicant applied for the variance as a ground sign, staff are of the opinion that the 25% electronic display message permitted for advertisements for an activity, product or service that is not available on the property is adequate for ground sign advertisements. Based on the foregoing, staff are of the opinion that the variance cannot be supported.

Variance 8 is required to permit the ground sign within 75% of the maximum height of the ground sign of any property line. The Sign By-law does not permit a ground sign to be located within 1.5 m or 75% of the height of the ground sign whichever is the greater. Staff are of the opinion that a setback of 14.68 m (75% of the height of the sign) is more appropriate for the setback and location of the sign, and the reduction facilitates the potential distraction of the electronic message display in proximity of the QEW. Based on the foregoing, staff are of the opinion that the variance cannot be supported.

3. Hamilton Zoning By-law No. 05-200 requires a minimum 14.0 m setback from a Provincial Highway Right-of-Way for all buildings, structures, required parking area and stormwater management facilities. Therefore, since the proposed ground sign is located 4.4 m from the QEW, the proposed sign does not comply with the Zoning By-law.
4. The City of Hamilton may approve a Sign Variance Application if the general intent and purpose of the Sign By-law is maintained, and the proposal has regard for the four tests, as set out in Section 6.5 of By-law No. 10-197 (see Appendix “C”).

Pursuant to section 6.5 of the City of Hamilton Sign By-law, in considering applications for sign variance, the following shall be considered:

- a) Special circumstances or conditions applying to the land, building or use referred to in the application;

- 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;
- c) Whether such special circumstances or conditions are pre-existing and not created by the Sign Owner or applicant; and,
- 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.

These four tests are evaluated in the following comments:

- a) Special circumstances or conditions applying to the land, building or use referred to in the application;

There are no special circumstances or conditions applying to the land, building or use. The concern is the location of the proposed sign not on the subject lands, but in relation to the sign being located in this specific area due to natural features, animals and the proximity to the Queen Elizabeth Way (QEW).

- 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;

Strict application of Section 5.1.1 (f) Prohibited Uses, would not allow any sign to be located within 400.0 m of the QEW, notwithstanding the other variances requested (i.e. relocation, height reduction, no electronic message display and sign face reduction). Additionally, Section 3.2.2(e) requires that proof of approval for the proposed sign from all governmental authorities having jurisdiction shall be provided to the Director or where a building permit is required, the Chief Building Official. In this circumstance, the agent has not provided proof that the Ministry of Transportation Ontario (MTO) has provided such approval. Furthermore, based on the comments received from the MTO, the proposed sign will not receive such approval due to the location of the sign in proximity to the QEW. Therefore, as the proposed sign cannot receive the proper approvals from the governmental authorities that have jurisdiction, strict application of the provisions do apply and special circumstances are not present as a result.

- c) Whether such special circumstances or conditions are pre-existing and not created by the Sign Owner or applicant; and,

The subject lands are located next to the QEW and Van Wagner's Ponds and Marshes Environmentally Significant Area (ESA) and the proposed sign is located within both the Regulatory Floodplain and erosion hazard (meander belt) of Redhill Creek. These special circumstances are pre-existing and not created by the Sign Owner or applicant. However, these areas cannot be relocated or removed and should be taken into consideration and appropriate measures taken or alternatives considered when proposing development.

- 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.

Due to the size, location and the electronic display message, the proposed sign will visually impact the area and alter the character of the area. Adjacent properties, including the QEW, Burlington Street and the Redhill Valley Parkway, will be impacted by the proposed sign. Impacts may include light emanating from the electronic display and physical visibility impacts. The travelling public and surrounding area may be impacted by the proposed signs from the light emanating from the electronic display and may result in vehicle traffic safety concerns within the area.

Furthermore, there are no other ground signs along this stretch of highway that front onto the QEW. No electronic display message signs are located within the vicinity of the subject lands. Permitting 100% electronic (display messaging) would negatively alter the character of the area and set a standard for other properties and businesses to apply to permit 100% electronic display messaging, and third party advertising, which would further alter the essential character of the area.

The rationale as to why the sign variance application contained in the appeal letter submitted by Kramer Design Associates Limited (see Appendix "E"), include "being an important welcome beacon to the City", "positively contribute to the economic vitality of the City" and "vital to the ongoing success to the City". Based on a review of the rationale outlined in the appeal letter, staff are of the opinion that the rationale for supporting the variances are sufficient for staff to give reconsideration of the variances. Based on the foregoing, the variances requested do not have regard for the four tests and do not maintain the general intent and purpose of the Sign By-law.

5. The location of the proposed Tim Horton's Field/Tiger Cats Football sign is located adjacent to the Red Hill Creek and Van Wagner's Ponds and Marshes Environmentally Significant Area as identified on Schedule "B" – Natural Heritage Systems in the UHOP.

Van Wagner's Ponds and Marshes ESA is located on both sides of the QEW. While the linkage to Hamilton Harbour is physically interrupted by the road crossing, these areas remain ecologically linked as wetlands which are used as feeding areas by many waterbirds nesting in the Harbour and by waterfowl and shorebirds using the Harbour as a migratory stopover or wintering area. Windermere Basin, while located at a distance relatively far from the location of the proposed sign, also provides habitat for birds.

Based on policies within the UHOP, natural features and ecological functions of "Core Areas" shall be protected (Policy C.2.3.3). As a result, there is a concern about the negative impact of lighting from the sign and the possible effects on birds since migrating birds may be attracted to this light and collide with structures. To address this concern, further clarification on how the sign will be lit is required. If the sign is lit from below, mitigation measures are recommended (i.e. providing shielding for lights and lighting the sign from above) to minimize the amount of light that is projected.

ALTERNATIVES FOR CONSIDERATION

Option 1

Council may uphold the recommendation of the Director, Planning Division, to refuse the proposed variances as they do not maintain the general intent and purpose of the By-law. The sign could be redesigned and relocated to another property in the area, so as to comply to Hamilton Sign By-law No. 10-197.

Option 2

Council may deny the recommendation of the Director, Planning Division, and support the proposed variances, as submitted. If Council supports the proposed variances, staff requires conditions of approval. However, it is staff's opinion that this option does not maintain the general intent and purpose of the Sign By-law.

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

- 1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.
- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

APPENDICES AND SCHEDULES ATTACHED

Appendix "A": Location Map and Aerial

Appendix "B": Site Plan

Appendix "C": Section 6.0 of Sign By-law No. 10-197

Appendix "D": Elevations and Renderings

Appendix "E": Appeal Letter

Appendix "F": Definitions and Excerpts of Section 5.1, 5.2 and 5.10 of Sign By-law No. 10-197

Appendix "G": Comments from Ontario Ministry of Transportation

Appendix "H": Comments from Hamilton Conservation Authority

DMB/tp