



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	August 11, 2015
SUBJECT/REPORT NO:	Application for an Amendment to the City of Hamilton Zoning By-law No. 05-200 for Lands Located at 108 James Street North and 111 and 115 Hughson Street North (Hamilton) (PED15029(b)) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Edward John Senior Project Manager (905) 546-2424 Ext. 5803 Steve Robichaud Director of Planning and Chief Planner
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That in accordance with the Council Motion of March 31, 2015, approval be given to **Zoning Application ZAR-15-001, by Diamante Investments Ltd., Owner**, for changes in zoning to Hamilton Zoning By-law No. 05-200 from the Downtown Prime Retail Streets (D2) Zone, the Downtown Mixed Use (D3) Zone and the Downtown Multiple Residential (D6) Zone to a modified Downtown Prime Retail Streets (D2, 451, H60) Holding Zone for lands located at 108 James Street North and 111 and 115 Hughson Street North, in order to permit restoration of the existing theatre and a 22-storey mixed-use building, consisting of accessory commercial and residential uses, for the lands shown on Appendix “A” to Report PED15029(b) be approved on the following basis:

- (i) That the draft By-law, attached as Appendix “B” to Report PED15029(b), which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council;
- (ii) That pursuant to Section 34(17) of the Planning Act, Council is satisfied that no further notice and no additional public meeting is required to deal with the implementation of Council's direction in respect of the draft By-law, attached as Appendix “B”.

- (iii) That the draft By-law, attached as Appendix “B”, is in accordance with the Council adopted Motion of March 31, 2015.

EXECUTIVE SUMMARY

At the Planning Committee of March 31, 2015 (and later ratified at the Council Meeting of March 31, 2015), a motion was brought forward to approve the proposed development subject to further negotiations taking place with respect to the treatment of the podium design, setbacks and elevations, reduced parking provisions and the transfer of density permissions from the existing theatre located at 111 Hughson Street North. Staff were directed to negotiate a framework for an agreement, pursuant to the *Planning Act*, the *Ontario Heritage Act* and any other applicable legislation for the implementation of the development proposal to provide for the restoration of the Tivoli Theatre and timing of occupancy of the non-theatre uses, in particular that the Tivoli Theatre Auditorium and associated front-of-house component is completed prior to occupancy of any residential units.

Staff have completed these negotiations and developed an implementing By-law and concept plans (attached as Appendix “B” and “C”, respectively) for Council approval. The proposed By-law (in addition to other *Planning Act* and *Ontario Heritage Act* instruments) will ensure the design and uses as proposed shall be implemented in accordance with the approved Council Motion.

Alternatives for Consideration – See Page 10

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

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. The application was heard at the March 31, 2015 Planning Committee.

HISTORICAL BACKGROUND

Proposal:

The purpose of this application is to permit a 22-storey mixed-use building, including a three-storey podium. There will be a maximum of 106 residential units (floors 4-22), commercial and office uses (on the first three floors), outdoor patio, and a multi-level enclosed parking structure using a parking stacker system, providing a parking ratio of 0.5

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spaces per residential unit. The development will also restore the existing Tivoli Theatre auditorium and adaptively re-use the existing building at 115 Hughson Street North.

Chronology:

- January 15, 2014: Formal Consultation (FC-13-108).
- May 22, 2014: Presented at Design Review Panel.
- June 11, 2014: Preliminary Site Plan Review (PSR-14-055) reviewed at Development Review Committee.
- September 10, 2014: Open house and information session hosted by the applicant.
- December 1, 2014: Submission of Application ZAR-15-001 by Diamante Investments Ltd.
- December 10, 2014: Application ZAR-15-001 deemed complete.
- December 17, 2014: Circulation of Notice of Complete Application.
- February 10, 2015: Public Notice sign posted on the subject property.
- February 13, 2015: Statutory Notice of Public Meeting mailed to 345 properties.
- March 3, 2015: Public Meeting was cancelled and rescheduled to March 31, 2015 in order to allow for further consultation with the Beasley Neighbourhood Association.
- March 10, 2015: Public Notice sign on the subject property revised to reflect the new meeting date.
- March 13, 2015: Statutory Notice of Public Meeting mailed to 345 properties.
- March 31, 2015: Planning Committee and Council approved a motion to direct staff to negotiate and prepare an implementing by-law to approve the development subject to several criteria.

Details of Submitted Application:

Location: 108 James Street North and 111 and 115 Hughson Street North (Hamilton)

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Owner: Diamante Investments Ltd.

Agent: GSP Group

Property Description: Area: 0.28 ha
Frontage: 22 m (James Street North)
Depth: 92 m

Existing Land Use And Zoning:

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
<u>Subject Lands:</u>	Vacant (along James Street North), Tivoli Theatre and single detached dwelling (Hughson Street North)	Downtown Prime Retail Streets (D2) Zone, Downtown Mixed Use (D3) Zone, Downtown Multiple Residential (D6) Zone

Surrounding Lands:

North	Office / Retail / Residential	Downtown Prime Retail Streets (D2) Zone, Downtown Multiple Residential (D6) Zone
South	Offices / Commercial / Retail	Downtown Prime Retail Streets (D2) Zone, Downtown Mixed Use (D3) Zone
East	Residential / Commercial	Downtown Residential (D5) Zone
West	Offices / Retail	Downtown Prime Retail Streets (D2) Zone

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1. City of Hamilton Planning Committee and Council approved the following Motion on March 31, 2015:

That in respect of **Zoning Application ZAR-15-001, by Diamante Investments Ltd., Owner**, for changes in zoning to Hamilton Zoning By-law No. 05-200 from the Downtown Prime Retail Streets (D2) Zone, the Downtown Mixed Use (D3) Zone and the Downtown Multiple Residential (D6) Zone to a modified Downtown Prime Retail Streets (D2) Zone for lands located at 108 James Street North and 111 and 115 Hughson Street North (“Tivoli Theatre Lands”), in order to permit the redevelopment and restoration of the Tivoli Theatre lands comprised of a performing arts theatre with accessory front of house commercial uses, general commercial uses and residential uses in a new 22-storey mixed-use building addition, accommodating a maximum of 106 units with associated parking through combination of surface and stacked parking, and the restoration and adaptive reuse of the existing single detached dwelling at 115 Hughson Street North, for the lands shown on Appendix “A” (hereto attached):

- (a) That Planning and Economic Development Department Report PED15029(a) be received;
- (b) That the rezoning of the Tivoli Theatre Lands be approved in order to permit the redevelopment of the Tivoli Theatre such that the Tivoli Theatre is restored and that the following accessory uses be permitted: accessory front of house commercial uses and general commercial uses and residential uses in a new 22-storey mixed-use building addition accommodating a maximum of 106 units with associated parking through combination of surface and stacked parking, the restoration and adaptive reuse of the existing single detached dwelling at 115 Hughson Street North for residential and commercial uses relating to the Tivoli Theatre;
- (c) That Planning staff be directed to report back to Planning Committee on the *Planning Act* tools, including a recommended Zoning By-law Amendment that implements the approval in Recommendation (b) and subject to the following:
 - i. the design is revised to provide for a revised podium with a maximum height of five storeys along James Street North;
 - ii. an increased building setback from James Street North for the portion of the building above the podium;
 - iii. enhanced north and south building facades;
 - iv. parking be provided at a targeted ratio of not less than 0.50 spaces per residential unit;

- v. the transfer of residential use permissions (including density) from the Tivoli Theatre portion of the subject lands to the portion of the lands on which the accessory condominium use will be permitted;
 - vi. that the accessory front of house commercial uses, the general commercial uses and number of residential units shall be in general conformity with the concept plans attached as Appendix “B” to PED15029(a); and,
 - vii. to ensure that the revised proposal is reviewed by the Development Review Panel and that the final site plan is in conformity with the revised building elevations; and,
- (d) Planning staff and the City Solicitor be directed and authorized to meet and negotiate a framework for an agreement, pursuant to the *Planning Act*, the *Ontario Heritage Act* and any other applicable legislation for the implementation of the development proposal to provide for the restoration of the Tivoli Theatre and timing of occupancy of the non-theatre uses, in particular that the Tivoli Theatre Auditorium and associated front-of-house component is completed prior to occupancy of any residential units.
2. The above Motion raised a number of requirements intended to be addressed through a combination of *Planning Act*, *Ontario Heritage Act* and legal instruments. Each one of these aspects will be discussed and addressed below.

Nature of the use

The above Motion articulated a number of changes to the proposed development in respect to the nature of the uses and the manner in which they were to exist within the amending By-law. These aspects could be divided into the following sub-categories.

- i) Approval of a theatre with accessory commercial and residential uses;
- ii) Retention and adaptive re-use of 115 Hughson Street North; and,
- iii) Transfer of existing density permissions from 111 Hughson Street North (the existing Tivoli site).

With respect to item i), the intent was to provide a mechanism in which the restoration of the Tivoli Theatre was both secured and prioritized. The Motion identifies the proposed commercial and residential uses as accessory, and therefore secondary, to the principal use of the lands for the Theatre. In order to achieve this, staff, in the amending By-law, firstly identified in the Permitted Use

Section, a theatre within the existing building and the proposed commercial and residential uses as accessory to the Theatre (see Appendix “B” Section 2.a) i)).

Secondly, within the proposed Holding Provisions of the By-law (see Appendix “B” Section 4. iv)) staff require a legal agreement to be entered into by the owner recognizing that the residential use of the building shall be restricted until such time as sufficient restoration works to the existing Theatre (identified in the required Conservation Management Plan) have been implemented.

With respect to the adaptive re-use and maintenance of the existing building at 115 Hughson Street North, as identified in the Permitted Use Section of the implementing By-law (see Appendix “B” Section 2.a)i)c)) all uses permitted within the lands known as 115 Hughson Street North, shall be restricted to the building existing at the time the By-law is adopted. It is considered that this provision shall sufficiently ensure the retention and adaptive re-use of the existing building at 115 Hughson Street North. Should the building be demolished, future uses would be required to be established through a comprehensive Zoning By-law Amendment.

Finally, with respect to the transfer of density permissions, a legally binding Restrictive Covenant is required through a Holding Provision attached to the implementing By-law (see Appendix “B” Section 4.iv)b)). The Restrictive Covenant, which will be registered on Title, will restrict any use of the lands at 111 Hughson Street North (Tivoli Theatre) to that of the existing theatre. This will ensure that the additional density provisions afforded to the balance of the lands is respected and maintained.

Design

The Motion identifies a number of areas to address with respect to the design of the building. These aspects could be divided into the following sub-categories:

- i) Podium;
- ii) Elevations; and,
- iii) Setbacks.

Through discussions with the applicant, the design of the podium has been amended from the original concept to one that incorporates more use of transparent and glazed elevations. The increased glazing has permitted the amount of proposed glazing on the first floor to 70%, which exceeds the current By-law requirement for 60%. With respect to the amount of glazing within the second and third storey facades, it is requested that this be increased to a minimum of 60%, whereas a maximum of 40% is permitted within the existing By-

law. This subsequent treatment is considered minor and would respect the intent of the By-law provision and general character of the area. More significant reductions (0%) are being recommended for the facades along Hughson Street North, however, this is a result of the existing condition of the Tivoli Theatre and adjacent dwelling, which is not proposed to change.

The Motion with respect to the podium provided the opportunity to increase the height from a three-storey podium up to a potential five storeys. The intent was to provide an offset to encourage other more desirable amendments, in particular, a greater setback from James Street North for the tower portion of the building. Through discussions with the applicant, the opportunity to create a five-storey podium was not necessary to offset the additional setbacks and retention of the property at 115 Hughson Street North, and did not offer any additional advantages with respect to the proposed uses, and as such, the decision to maintain the proposed three-storey podium was made.

With respect to the elevations as detailed extensively in the previous staff reports (PED15029 and PED15029 (a)), concern was raised over the minimal articulation, and in particular glazing, of the north and south elevations. Following recent discussions, the applicant explored the possibility of design changes that would allow for the use of transparent material in which to enclose the stairwells that would exist within both the north and south elevations. As detailed in the attached perspective (see Appendix “C”), the result has allowed the implementing By-law to specify a minimum of 20% of glazing within these elevations. The provision within the amending By-law (see Appendix “B” - Section 2.c)), has been incorporated to ensure the intent of the proposed perspective has been achieved.

It is noted that the enclosing of the stairwells from an Ontario Building Code (OBC) perspective will not be considered glazing which forms part of the building, but instead, will be considered an enclosure treatment of an external fire escape. As such, the language in the implementing By-law provision attempts to characterize this subtle, but important nuance, in order to ensure the stairwells can satisfy the intent of the By-law while satisfying the requirements of the OBC.

Finally, with respect to setbacks, the applicant has proposed an increase of the previous setback proposed above the podium (4th – 22nd storeys). Originally the applicant proposed a setback of 2.0 m and now has increased this to 3.0 m. This has been accommodated and required within the implementing By-law. It is noted that the current perspective illustrated in Appendix “C” indicates a further setback in excess of 3.0 m for the 4th and 5th storeys. While this is currently part of the intended design, it has not been required in the implementing By-law in order to provide flexibility should changes to the design occur through the Site Plan process.

Remaining By-law Provisions and Holding Provision Requirements

In order to implement and secure the adaptive re-use of 115 Hughson Street North, and recognizing both the existing space constraints of the subject lands, and its beneficial location with respect to public transit and walkability, the Motion adopted by Hamilton City Council further reduced the required parking ratio to 0.5 spaces per unit.

This proposed parking provision has been incorporated into the implementing By-law. This reduced parking provision would eliminate the need for the proposed surface parking spaces that were to be created following the demolition of the property currently at 115 Hughson Street North, and would also permit the increased setback of the front elevation (along James Street North), as this would affect the amount of parking previously proposed through the parking stacking system.

The implementing By-law also stipulates a number of regulations including but not limited to a maximum 106 residential units, a maximum height of 76 m, permission for commercial entertainment to be provided within all the storeys of the podium; and, a definition of proposed parking stacking system. Collectively these provisions are intended to ensure the development is designed and used as proposed and consistent with the Motion approved by Council.

As detailed within the previous staff report (PED15029(a)), a number of outstanding issues were identified with respect to Heritage Permits, Heritage Impact Assessments, Record of Site Condition, Noise Study, and engineering. These outstanding items will be addressed through the Holding Provisions contained within the implementing By-law.

The Holding Provisions prescriptively detail the process, expectations and integrate the required *Planning Act*, *Ontario Heritage Act* and legal mechanisms. In particular, an agreement under the *Ontario Heritage Act* will be required and will identify, through the creation of a Conservation Management Plan, the restoration requirements of the Theatre and subsequent financial securities to ensure the Theatre is restored and available for occupancy prior to the use of residential tower. This will be in conjunction with a Conservation Easement, to further protect and secure the long term conservation and maintenance of the Theatre.

Restrictive covenants will also be required to be registered on title which shall ensure the Tivoli Theatre is not redeveloped for another use or expanded, and further that covenants will be registered on title to ensure the building at 115 Hughson Street North is not demolished but instead adaptively re-used for the

range of commercial and residential uses permitted within the implementing By-law (see Appendix “B” Subsection 4.(iv) (b) and (c)).

Process and Implementation

The process in which the intent of the Motion is to be secured and delivered is through a combination of *Planning Act*, *Ontario Heritage Act* and legal instruments. Firstly, the Zoning By-law attached to this report (See Appendix “B”) will establish the principle of the land-use and provide the framework in which to integrate co-ordination of the other instruments.

The requirement to create the legal agreements and receive the necessary *Ontario Heritage Act* approvals will be facilitated and directed through the Holding Provisions, and will be co-ordinated and integrated through the subsequent Site Plan Approval process.

In order to provide clarification for the comprehensive and complex nature of the By-law, the current site plan will also be included and attached to the implementing By-law. The site plan shall be used to inform the Zoning By-law provisions and provide guidance with respect to the intent and nature of the implementing vision.

Alternatives for Consideration

1. Committee may direct to staff to further negotiate with the applicant in order to further resolve any outstanding items.
2. Committee may not approve the implementing By-law and the lands would be permitted to be used only in accordance with the existing Downtown Prime Retail Streets (D2) Zone, the Downtown Mixed Use (D3) Zone and the Downtown Multiple Residential (D6) Zone.

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.

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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).

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

2.2 Improve the City's approach to engaging and informing citizens and stakeholders.

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

3.1 Engage in a range of inter-governmental relations work that will advance partnerships and projects that benefit the City of Hamilton.

3.2 Build organizational capacity to ensure the City has a skilled workforce that is capable and enabled to deliver its business objectives.

3.3 Improve employee engagement.

3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A": Location Map
- Appendix "B": By-Law
- Appendix "C": Concept Plan
- Appendix "D": Council Motion

:EJ/th