



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	August 11, 2015
<b>SUBJECT/REPORT NO:</b>	Applications for an Official Plan Amendment and Zoning By-law Amendment for Lands Located at 312 and 314 Catharine Street North (Hamilton) (PED15109) (Ward 2)
<b>WARD(S) AFFECTED:</b>	Ward 2
<b>PREPARED BY:</b>	Greg Macdonald Senior Planner (905) 546-2424 Ext. 4283  Steve Robichaud Director of Planning and Chief Planner
<b>SUBMITTED BY:</b>	Jason Thorne General Manager Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That approval be given to **Amended Official Plan Amendment Application OPA-14-015, by Sergio Manuel Ferreira and Fabiana Apolinario Pessoa, (Owners)**, to amend the West Harbour Secondary Plan with a Site Specific Policy to permit a commercial and wholesale bakery, take-out restaurant, catering establishment and two upper storey dwelling units at 312 and 314 Catharine Street North (Hamilton), as shown on Appendix “A” to Report PED15109, on the following basis:
  - (i) That the draft Official Plan Amendment, attached as Appendix “B” to Report PED15109, be adopted by City Council.
  
- (b) That approval be given to **Amended Zoning By-law Amendment Application ZAR-14-032 by Sergio Manuel Ferreira and Fabiana Apolinario Pessoa, (Owners)**, for a modification to the “D” (Urban Protected Residential – One and

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Two Family Dwellings, Etc.) District, to permit a commercial and wholesale bakery, take-out restaurant, catering establishment and two upper storey dwelling units at 312 and 314 Catharine Street North (Hamilton), as shown on Appendix “A” to Report PED15109, on the following basis:

- (i) That the draft By-law, attached as Appendix “C” to Report PED15109, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council; and,
- (ii) That the proposed change in zoning is consistent with the Provincial Policy Statement (2014), conforms to the Growth Plan for the Greater Golden Horseshoe (Places to Grow), and is in conformity with the Hamilton Official Plan upon finalization of Official Plan Amendment No. [REDACTED].

### **EXECUTIVE SUMMARY**

Sergio Manuel Ferreira and Fabiana Apolinario Pessoa, through their planning consultant, IBI Group, have applied for an Official Plan Amendment and Zoning By-law Amendment to permit a commercial and wholesale bakery, take-out restaurant, catering establishment and two upper storey dwelling units on the subject lands (312 and 314 Catharine Street North), known as Bonanza Bakery (which includes recognizing the illegal expansion from 312 to 314 Catharine Street North). Bonanza Bakery consists of an existing commercial and wholesale bakery contained within 314 Catharine Street North and an existing take-out restaurant (no seating) that is located within both 312 and 314 Catharine Street North. A single dwelling unit is located on the upper storey of each address. The existing business also includes specialty catering services. No off-street parking is available but there are limited spaces on-street on a ‘first-come, first-serve’ basis as well as parking within the municipal boulevard along Murray Street East as part of a Commercial Boulevard Parking Agreement which has been in place since 1979. Staff are working with Bonanza Bakery to ensure the site is in compliance with that agreement so that some off-street parking is available.

Bonanza Bakery was a legally established non-conforming use at 314 Catharine Street North, as the existing “D” (Urban Protected Residential – One and Two Family Dwellings, Etc.) District does not permit the uses and the use predates the Zoning By-law. However, in 2013 the bakery acquired the adjacent property to the south at 312 Catharine Street North and illegally expanded the take-out restaurant onto the main floor of 312 Catharine Street North through a small addition (the limits of the existing bakery operation have not changed). As the expansion occurred onto a different property (without the requisite building permit) it was not possible for the applicant to legalize the expansion through a Minor Variance, hence the submission of this Official Plan Amendment and Zoning By-law Amendment.

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The applications can be supported as they meet the intent of the “Local Commercial” policies in the West Harbour Secondary Plan with regard to the existing uses being considered “Local Commercial”. The applications meet the intent of the Stable Areas policies in that the existing built form (i.e. the front façade continues to look like a single detached dwelling) is being maintained and the existing commercial use is compatible with neighbouring residential uses. Finally, it serves to recognize a long standing commercial use in the neighbourhood on a corner location, in proximity to major roads. An ‘H’ Holding Provision is recommended in the implementing By-law in order to require the applicant to update existing boulevard parking and encroachment agreements.

***Alternatives for Consideration – See Page 23***

**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 applications for an Official Plan Amendment and Zoning By-law Amendment.

**HISTORICAL BACKGROUND**

**Proposal:**

The original application included a proposed redesignation from “Low Density Residential” to “Local Commercial” and a Rezoning from the “D” (Urban Protected Residential – One and Two Family Dwellings, Etc.) District to the “H” (Community Shopping and Commercial, Etc.) District. However, through the processing of the applications and discussions with staff, it was determined that it would be more appropriate to instead include a Site Specific Policy within the West Harbour Secondary Plan and to modify the existing “D” (Urban Protected Residential – One and Two Family Dwellings, Etc.) District, in order to recognize the legally established non-conforming Bonanza Bakery operation at 314 Catharine Street North and permit the illegal expansion of the operation onto 312 Catharine Street North. This is because instead of permitting a broader range of commercial uses, both the Official Plan Amendment and Zoning By-law Amendments would now serve only to permit the existing uses of the subject lands. Appendix “D” attached to this report identifies the survey plan and floor plans of the subject lands.

The principal bakery use has existed for more than 50 years at 314 Catharine Street North and included a take-out restaurant with associated catering operation. In 2013, the bakery purchased the abutting dwelling to the south at 312 Catharine Street North

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and proceeded to illegally construct a small addition connecting it to 314 Catharine Street North in order to expand the delicatessen aspect of the existing take-out restaurant component on the first floor while retaining an existing dwelling unit on the second floor. The hot food take-out component of the restaurant remained within 314 Catharine Street North as does the existing commercial and wholesale bakery operation. In 2013 the City of Hamilton issued Orders to Comply against the subject lands for failure to obtain the necessary building permits and change-in-use permits. At this time it was determined that the proposed use was not permitted within 312 Catharine Street North (it was legally established non-conforming within 314 Catharine Street North).

Subsequent to receiving the Order, the applicant retained a planning consulting firm and discussions with municipal planning staff occurred as to the appropriate mechanism in order to rectify the zoning non-conformity matter. The applicant had suggested that a Minor Variance under Section 45(2) of the *Planning Act* could be utilized. However, that section of the *Planning Act* only permits applications to expand a legally established non-conforming use within the boundary of the subject lands (i.e. within 314 Catharine Street North). Therefore, since the applicants had expanded beyond the limits of 314 Catharine Street North onto 312 Catharine Street North, that provision of the *Planning Act* would not apply. Following those discussions, the applicants proceeded to initiate the above noted Official Plan Amendment and Zoning By-law Amendment in order to legalize the existing uses.

**Chronology:**

June 26, 2012: The OMB issued a decision that brought the West Harbour Secondary Plan (City of Hamilton Official Plan Amendment No. 198) into force and effect.

March, 2013: Bonanza Bakery purchased 312 Catharine Street North and proceeded to expand the business operations onto the main floor of the newly acquired property.

May, 2013: Municipal Law Enforcement staff issued Orders to Comply for the expansion as the works had proceeded without necessary Building Permit or Change in Use Permits.

August 16, 2013: The OMB issued a decision that brought the UHOP into force and effect. Lands within the West Harbour Secondary Plan are noted as being subject to Non-Decision 113.

December 23, 2013: A Zoning By-law Amendment Application received by the City of Hamilton. The applicant was advised in January, 2014, that prior to submitting a Zoning By-law Amendment

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Application that a Formal Consultation Application would be required and that the Zoning Application would not be formally received by the City of Hamilton. The applicant subsequently submitted the necessary Formal Consultation Application on February 19, 2014.

March 26, 2014: Development Review Committee Meeting for Formal Consultation Application FC-14-011.

October 2 , 2014: Zoning Application ZAR-14-032 and Official Plan Amendment Application OPA-14-015 deemed complete.

October 13, 2014: Notice of Complete Application and Preliminary Circulation for Zoning Application ZAR-14-032 and Official Plan Amendment Application OPA-14-015 sent to all property owners and residents within 120 m of the subject lands.

October 22, 2014: Public Notice sign erected on the subject lands.

July 15, 2015: Public Notice sign updated with Public Meeting date.

July 24, 2015: Circulation of Public Meeting Notice for ZAR-14-032 and OPA-14-015 to all residents within 120 m of the subject lands.

**Details of Submitted Applications:**

**Location:** 312 and 314 Catharine Street North (Hamilton)

**Owners/Applicants:** Sergio Manuel Ferreira and Fabiana Apolinario Pessoa

**Agent:** IBI Group, c/o John Ariens

**Property Description:** Area: 0.053 ha

Frontage: 13.81 m (along Catharine Street North)

Depth: 37.39 m (along Murray Street East)

**Servicing:** Full Municipal Services

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**EXISTING LAND USE AND ZONING:**

	<b><u>Existing Land Use</u></b>	<b><u>Existing Zoning</u></b>
<b><u>Subject Lands:</u></b>	Bonanza Bakery with two upper-storey dwelling units (one each at 312 and 314 Catharine Street North)	“D” (Urban Protected Residential – One and Two Family Dwellings, Etc.) District
<b><u>Surrounding Lands:</u></b>		
<b>North</b>	Single Detached and Duplex Dwellings	“D” (Urban Protected Residential – One and Two Family Dwellings, Etc.) District
<b>South</b>	Row Houses (street townhouse dwellings) and municipal alleyway	“D” (Urban Protected Residential – One and Two Family Dwellings, Etc.) District
<b>East</b>	Row Houses (street townhouse dwellings)	“D” (Urban Protected Residential – One and Two Family Dwellings, Etc.) District
<b>West</b>	Single Detached Dwellings	“D” (Urban Protected Residential – One and Two Family Dwellings, Etc.) District

**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

**Provincial Policy Statement (2014):**

The application has been reviewed with respect to the Provincial Policy Statement (PPS). The application is consistent with the policies that focus growth in Settlement Areas (Policy 1.1.3.1). The proposal also provides a density and mix of uses that contribute to the efficient use of land and supports active transportation as no parking is provided for the uses (Policy 1.1.3.2). It directly implements Policy 1.3.1(c) which states that “Planning authorities shall promote economic development and competitiveness by encouraging compact, mixed-use development that incorporates compatible employment uses to support liveable and resilient communities.” Finally, the proposal implements the housing policies of Section 1.4 which promotes providing a range of housing options by retaining the upper-storey residential uses.

Based on the foregoing, the proposal is consistent with the PPS.

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**Places to Grow: Growth Plan for the Greater Golden Horseshoe:**

The subject lands are located within a built-up area, as defined by Places to Grow. Policy 2.2.2.1(h) encourages the development of complete communities with a diverse mix of land uses, a range and mix of employment and housing types which include easy access to local stores and services.

Based on the foregoing, the proposal conforms to the policies of the Growth Plan for the Greater Golden Horseshoe (Places to Grow).

**Hamilton Wentworth Official Plan:**

The subject lands are not included within the UHOP as they are part of Non-Decision No. 113. This means that the policies of the Hamilton Wentworth Official Plan applicable to the subject lands are still in effect. In this regard, the subject lands are within the Urban Area of the Hamilton Wentworth Official Plan pursuant to Section 3.1. Section 3.1 sets out the policies for urban areas and includes a strategy for the urban area that consists of a compact urban form, including mixed use areas. More specifically, Policy 3.1.1 notes that mixed forms of development within an urban area is preferable to widespread, low density residential development. The subject lands are located only a block from Barton Street East, which is identified in the Hamilton Wentworth Official Plan as a High Density Mixed-Use Corridor in order to have a range of residential, commercial, retail, institutional and related employment opportunities pursuant to Policy C.3.1.1.6(a).

Based on the foregoing, the proposal complies to the policies of the Hamilton Wentworth Official Plan.

**City Of Hamilton Official Plan:**

The subject lands are not included within the UHOP as they are part of Non-Decision No. 113. As a result, the policies of the City of Hamilton Official Plan remain in effect. The subject lands are included within the West Harbour Secondary Plan in the City of Hamilton Official Plan. The “West Harbour” designation in the City of Hamilton Official Plan does not contain specific policies but rather is utilized to note that the area is subject to the West Harbour Secondary Plan. Local Commercial policies contained within the former “Residential” land use designation are not in effect for the subject lands. The remaining policies of the Hamilton Official Plan from Section C (Amenity and Design Strategy) however, remain applicable. In this regard, the following policies, amongst others, would apply:

“C.7.3 Council will encourage a Residential Environment of an adequate physical condition that contains a variety of housing forms that will meet the needs of present and future residents. Accordingly, Council will:

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- i) Encourage the maintenance, renovation and rehabilitation of Residential properties, subject to the provisions of Subsection C.5;
- viii) Support the concept of accessory apartments as-of-right in all areas of the City as regulated by the Zoning By-law;
- ix) Support the concept of a Residential community that provides a diversity of dwelling forms and housing options accessible to all Hamilton residents;
- xi) Encourage the rehabilitation and renovation of dwellings as an alternative to demolition in appropriate locations and circumstances, having regard to the preservation and maintenance of the amenity of the Residential area.”

The proposal encourages the maintenance, renovation and rehabilitation of an existing residential dwelling in that the proposal maintains the exterior built form. From the front façade of 312 and 314 Catharine Street North there is no indication that the ground floor is utilized by a commercial operation (it still appears as a single detached dwelling). By retaining the two dwelling units on the second storeys, the proposal also provides a diversity of dwelling forms and housing options. These dwelling units are functionally accessory apartments which are permitted by the existing “D” District zoning provisions.

As the proposal is to recognize an existing legally established non-conforming commercial operation and its illegal expansion into an abutting dwelling, it is an example of a development that makes more efficient use of the existing building stock, while not altering the existing scale and character of the existing residential area, and therefore will maintain the existing lot size, building height, massing, coverage, and setbacks of the property and the area.

Therefore, based on the above, the proposal meets the general intent of the former City of Hamilton Official Plan with respect to the general policy direction from Section C.

**West Harbour Secondary Plan (OPA No. 198):**

The West Harbour Secondary Plan was approved by Council in 2005. However, due to appeals to the OMB, the Secondary Plan was not deemed to be in effect until the OMB issued its final decision on the Secondary Plan in 2012, which added the plan to the former City of Hamilton Official Plan as that was the Official Plan that was in effect for the former City of Hamilton at that time. When the UHOP was brought into effect by the OMB in 2013, all of the lands within the West Harbour Secondary Plan area were noted as being within Non-Decision No. 113 within the UHOP. Therefore, the operable Secondary Plan policies in effect to review against the proposed development are those contained within the former City of Hamilton Official Plan.



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The subject lands are designated “Low Density Residential” on Schedule M-2: General Land Use Plan of the West Harbour Secondary Plan. They are also noted as being within a “Stable Area” on Schedule M-1: Planning Area and Sub-Areas Schedule. However, it is important to note that the lands are also located within a block of both the Ferguson-Wellington Corridor and Barton Street East. The Ferguson-Wellington Corridor is one of the three areas of the West Harbour Secondary Plan that is noted as being an “Area of Major Change”. Barton Street East is identified as a “Corridor of Gradual Change”.

The West Harbour Secondary Plan had been prepared to be a comprehensive planning framework for the West Harbour area (hence the deletion of the former underlying land use designations within the City of Hamilton Official Plan). In this regard, the introductory section of the Secondary Plan provides a background to the creation of the plan which precedes policies for the eight major planning principles for the plan. Of note within the introduction of the plan is the final sentence of the following paragraph of the introduction (part of Policy A.6.3.1):

“*Setting Sail* is a comprehensive plan for West Harbour, with an emphasis on three areas where major change is appropriate and desirable. These include the Waterfront; the area south of the CN rail yard, called Barton-Tiffany; and the former industrial lands along Ferguson Avenue, referred to as the Ferguson-Wellington Corridor. The plan also focuses on commercial and mixed-use corridors within the area, where strategic redevelopment and streetscape improvements would strengthen the economic vitality of the corridors, provide additional amenities to adjacent neighbourhoods and generally beautify the area. The remaining areas in West Harbour are considered Stable Areas. The intent of the policies for these areas is to preserve their predominant residential character while allowing incremental, small-scale change to occur.”

This introductory paragraph sets the stage for the overall framework of the plan whereby major growth and changes are directed to the three areas of major change and along the commercial and mixed-use corridors, while the stable, predominantly residential neighbourhoods would be managed in a way to support more incremental (i.e. less intensive) forms of change, redevelopment and intensification. The subject lands are within the Stable Area and therefore, it is important to preserve their predominant residential character while allowing for incremental, small-scale change. The expansion of the existing bakery that has existed for more than 50 years at 314 Catharine Street North into the adjacent dwelling with no exterior change to the streetscape or without even a major change in the operation of the business is an example of the form of incremental, small-scale change envisioned within the Stable Area of the *Setting Sail* Secondary Plan.

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The Secondary Plan then establishes eight core principles to be used as a foundation for the Secondary Plan and as criteria against which future initiatives and proposals will be evaluated.

**West Harbour Secondary Plan Planning Principles:**

These principles are: “Promote a healthy harbour”, “Strengthen existing neighbourhoods”, “Provide safe, continuous public access along the water’s edge”, “Create a diverse, balanced and animated waterfront”, “Enhance physical and visual connections”, “Mitigate or eliminate physical barriers to the waterfront”, “Promote a Balanced Transportation Network”, “Celebrate the City’s heritage”, and “Promote excellence in design”. Of these planning principles of particular importance to the proposed development is Policy A.6.3.2.2 (Strengthen existing neighbourhoods) as it relates to the diversity of the various neighbourhoods (including the Beasley Neighbourhood) and notes that where once industries attracted workers, the attractions for residents are now the area’s historic character and that this character and the neighbourhoods’ physical relationship to the waterfront are assets to be protected and enhanced. Within A.6.3.2.2 the following direction is provided:

- “i) Ensure new development respects and enhances the character of the neighbourhoods;
- iv) support James Street as the area’s main commercial street;
- v) encourage new commercial uses that cater to the local neighbourhood;
- x) preserve, restore and/or reuse buildings of historic or architectural significance;
- xi) preserve and maximize on street parking;”

Based on the above, the recognition of the illegal expansion of Bonanza Bakery into the abutting single detached dwelling at 312 Catharine Street North does respect and enhance the character of the neighbourhood as it both retains a residential function on the upper-storey and does not alter the residential built form of the Catharine Street North streetscape. No exterior change to 312 Catharine Street North has occurred other than an addition to connect it to 314 Catharine Street North. This addition is not readily visible from Catharine Street North due to the existing minimal setbacks between the existing buildings and that the addition is substantially setback from the street.

As the bakery use has existed for many years and the expansion is only to facilitate more orderly operations for the take-out restaurant portion of the use (mainly the delicatessen aspect) it does not detract from James Street being the area’s main commercial street. While the use is not “new”, pursuant to clause v), it does cater predominantly to the local neighbourhood (both businesses and residents). Finally,

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while the two addresses subject to the applications are not identified as being of historic or architectural significance pursuant to clause x), the dwellings are still contemporary from the era when surrounding dwellings were first constructed and retaining the built form does aid in preserving the existing streetscape character. Therefore, the proposal is consistent with the policy direction contained within this Planning Principal for the Setting Sail Secondary Plan.

**West Harbour Secondary Plan General Policies:**

There are general policies within the Secondary Plan that apply to all parts of the West Harbour area that pertain to issues and opportunities viewed from an area-wide perspective. The following general policies should be considered:

“A.6.3.3.1.2 The City will ensure development and redevelopment in the neighbourhoods and lands surrounding West Harbour respect the type, scale and character of development identified in this plan.

A.6.3.3.1.9 To encourage a broad mix of household types at varying income levels, West Harbour shall accommodate a diversity of housing types, including detached and semi-detached dwellings, and multiple dwellings.”

The above noted policy direction recognizes that while development and redevelopment is supported in the neighbourhoods of the Setting Sail Secondary Plan, it must respect the type, scale and character of planned development. The subject lands and lands immediately adjacent, are planned for lower density residential uses (although within a block are lands planned for more substantive change along both the Barton and Ferguson-Wellington Street corridors). The expansion of Bonanza Bakery (albeit which has already occurred illegally) into the abutting dwelling, retaining both a dwelling unit and the exterior built form of the dwelling is an example of a development that does respect the surrounding low density form of development. Other than the addition, there are no changes to the exterior of the buildings. As noted both in the previous policy discussion and subsequent policy discussion for local commercial uses, this policy is not to be construed that no change can occur in the neighbourhoods of the Setting Sail Secondary Plan (i.e. the “Stable Areas”).

Prior to the illegal expansion into 312 Catharine Street North, the bakery use at 314 Catharine Street North would have been considered a “Legal Non-Complying Use” with regards to the Setting Sail Secondary Plan. That is because the use both predates the existing Official Plan provisions that apply to the subject lands and that the use would have been permitted under the former land use designation policies of the City of Hamilton Official Plan (“Central Policy Area” on Schedule ‘A’ of the City of Hamilton Official Plan). The Setting Sail Secondary Plan contains policies to address these non-complying uses and under what circumstances and evaluation criteria could expansions be considered. These criteria (Policy A.6.3.3.1.7) include the primary requirement that

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the expansion is only permitted if it does not create negative impacts on surrounding existing uses or planned uses. If Bonanza Bakery, prior to their illegal expansion, had approached the City of Hamilton with regards to whether the expansion would have been permitted by the Setting Sail Secondary Plan, it may have been permitted without an Official Plan Amendment under the policies for such an expansion. However, since the expansion occurred without a permit, the policies for such legal non-complying uses would not apply and therefore, an Official Plan Amendment is required. However, the existing bakery at 314 Catharine Street North remains as a legal non-complying use and the Official Plan Amendment is only required due to the illegal expansion into 312 Catharine Street North.

**West Harbour Secondary Plan Land Use Designation Policies:**

As previously noted, the subject lands are designated “Low Density Residential” on Schedule M-2: General Land Use Plan of the West Harbour Secondary Plan. The following policies would apply:

“A.6.3.3.1.12 In Low Density Residential areas:

- i) the scale, type and character of new development shall generally reflect existing low density development in the neighbourhood;
- ii) single detached, semi-detached and street townhouses are permitted;
- iii) the density of development shall range from 25 to 60 units per gross hectare;
- iv) existing grid patterns of streets, blocks, and open space, and/or those proposed by this plan, shall be respected;
- v) lot dimensions and building setbacks shall be generally consistent with other Low Density Residential properties in the neighbourhood;”

New commercial uses within the Setting Sail Secondary Plan must specifically be permitted either within the underlining land use designation or through a site specific policy. As the policy notes above, a commercial use is not permitted in the “Low Density Residential” land use designation and therefore an Official Plan Amendment is required to recognize the bakery use now that it has expanded illegally onto the abutting property at 312 Catharine Street North (although the existing bakery operations at 314 Catharine Street North remain permitted as a legally established non-complying use). In this regard, the proposal still meets the first policy directive for a “Low Density Residential” area in that the development reflects the existing low density development

in the neighbourhood. Both the front façade of the original bakery operation and expansion continue to retain their low density residential architectural character and neither front door is used to access the commercial operation. Furthermore, it is noted that the existing residential density conforms to the density provision (two dwelling units equates to 40 units/ha which is between the 25-60 units/ha contemplated in the plan).

In order to permit the illegally expanded bakery operation, the applicant had initially identified that a redesignation to “Local Commercial” should be contemplated. A review of the “Local Commercial” policies is contained below. However, after subsequent discussions with the applicant it has been determined that a Site Specific Policy Area should be applied in order to permit only the existing commercial and wholesale bakery, take-out restaurant and catering operation. This better reflects the existing low density residential built form of both the existing buildings and the surrounding neighbourhood. It also provides assurances to the local neighbourhood that the full range of broader commercial uses contemplated as “Local Commercial” would not be permitted, some of which would not meet the intent of the policy direction of the Secondary Plan.

The illegal expansion has not created nuisance impacts due to odour, vibration or fumes and the existing bakery operation within 314 Catharine Street North, including the location of the hot-food preparation area has not been altered by the expansion. The proposed use has not been intensified, rather, the expansion has allowed for more space for customers in the interior of the building (whereas under the previous layout, customer lines frequently backed out the door onto the Murray Street East sidewalk). The expansion does not have an impact on existing residential uses as no commercial access or exterior alterations to the residential streetscape along Catharine Street North has occurred. Therefore, it would be appropriate to permit the existing bakery operations through a Site Specific Policy.

#### **West Harbour Secondary Plan Local Commercial Policies:**

As noted above, the following “Local Commercial” policies provide guidance as to the matters to be considered when evaluating whether a new local commercial use should be permitted in a given area.

“A.6.3.3.1.19 In Local Commercial areas:

- i) commercial uses, such as retail stores, restaurants, take-out restaurants, banks, professional offices and personal services, are permitted;
- ii) other uses, including office and residential, are permitted and encouraged above the ground floor;

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- iii) auto-oriented commercial uses, such as gas stations and auto repair garages are not permitted. For greater clarity, this policy does not prohibit drive-through restaurants.
- iv) except grocery stores, large-scale retail uses are generally not permitted;
- v) the maximum height of buildings shall be 4 storeys;
- vi) front yard setbacks shall be consistent with the setbacks of adjacent buildings;
- viii) buildings shall be oriented to a public street, with main entrances on a street, with barrier free access at street level;
- ix) parking shall be located at the rear or side of buildings; and,
- x) loading and service areas shall be located at the rear of buildings wherever feasible.”

The above noted policies identify examples of the types of commercial uses that are considered as “Local Commercial”. In this regard, the existing retail and wholesale bakery operation primarily serves the local residential and business communities. A take-out restaurant is also specifically identified as a permitted local commercial use. The subject lands already contain a residential dwelling unit on the second storey of each building, which is a form of residential use that is encouraged.

The existing two-storey height and building setbacks that are consistent with the adjacent properties are being maintained. The existing bakery entrance directly from Murray Street East is not being altered. No off-street parking is provided (other than existing historic boulevard parking approvals) and the provided parking availability study indicated that some street parking is consistently available on surrounding streets even during the peak lunch rush. Therefore, the general policy direction from the “Local Commercial” designation is being maintained and the subject lands can be considered as an appropriate location for such a use. However, in order to provide greater certainty for local residents, it is proposed that in recognizing the bakery operation in the Official Plan, that a Site Specific Policy be utilized rather than a redesignation to “Local Commercial” to better recognize the existing built form and to ensure that an unfettered range of commercial uses would not automatically be permitted on the subject lands should the bakery use ever cease.

**West Harbour Secondary Plan Stable Area Policies:**

The subject lands are identified on Schedule “M-1” as a Stable Area. The following policies would therefore be applicable:

**“A.6.3.7 Stable Areas**

The Stable Areas are identified on Schedule “M-1”. They comprise the generally low-density neighbourhoods that define the residential character of West Harbour. Significant physical change is not anticipated in Stable Areas. The intent of the policies in this section is to maintain and reinforce the character of existing neighbourhoods and to encourage the replacement of inappropriate industrial and commercial uses with sensitively-designed residential development.

**A.6.3.7.1 Land Use**

A.6.3.7.1.1 The predominant land use in Stable Areas shall be Low Density Residential, with detached, semi-detached and street townhouses being the predominant types of housing.

A.6.3.7.1.2 Existing industrial and commercial uses in Stable Areas incompatible with neighbouring residential uses due to adverse noise, vibration, air quality and/or traffic impacts shall be encouraged to relocate to appropriate areas in the city.”

It should be noted that within the “Stable Areas” of the Setting Sail Secondary Plan, particularly south of the CN Rail tracks, are a large host of land use designations beyond just “Low Density Residential”. “Medium Density Residential”, “High Density Residential”, “Mixed Use”, “Local Commercial” and “Institutional” designations all exist within the “Stable Areas”. This is representative of the intent of the Stable Areas and that the predominant land use should be low density but that other uses are still able to co-exist where the predominant land use and character of the area is maintained. The policy direction is that existing noxious incompatible industrial or commercial uses should be encouraged to be relocated.

The proposal does generate vehicular traffic and on-street parking pressures, but such issues have existed within the community for a long period of time with only minimal complaints due to illegal parking. As discussed further in the Analysis and Rationale for Recommendation section of this Report, it is not evident that the expansion to the bakery has exacerbated any existing issue as the purpose of the expansion was to make the existing take-out restaurant component more proficient and timely with respect to the service to customers. The applicant has postulated that this has resulted in a faster turnaround of the customer experience and as such, relieved previous pressures on available on-street parking. The bakery serves the local residential and

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business community and this is not an incompatible use that the prevailing policy regime intends to be relocated to another area of the City of Hamilton.

Therefore, based on the above, the proposal meets the general intent of the West Harbour Secondary Plan and the intent of the “Stable Area” policies and staff are supportive of the Official Plan Amendment to recognize the existing use.

**Neighbourhood Plan:**

The subject lands are located within the Beasley Neighbourhood Plan. Pursuant to Policy A.6.3.3.1.1 of the West Harbour Secondary Plan, the portions of the Beasley Neighbourhood Plan that are within the West Harbour Secondary Plan are no longer in effect.

**RELEVANT CONSULTATION**

The following Departments and Agencies had no comments or objections:

- Operations and Waste Management Division (Public Works Department).

The following Departments and Agencies submitted the following comments:

**Traffic Engineering Section (Public Works Department)** originally had advised that the expansion of the existing operation may have the potential to increase vehicular trips to and from the bakery and that in 2006 after a review of the intersection that implementation of an all-way stop control at Murray Street East and Catharine Street North was not necessary. However, at that time a recommendation to increase a no-stopping zone at the intersection was recommended but not implemented by Public Works Committee (in order that maximum on-street parking could be retained). Remaining Traffic Engineering comments pertain to the need for the applicant to update existing boulevard encroachment agreements (as well as for Hamilton Municipal Parking System to update existing boulevard parking agreements). This is being addressed through a recommendation to place the subject lands into an ‘H’ Holding Provision to require these agreements to be updated.

In order to evaluate whether the expansion has increased traffic, a number of spot-checks were undertaken by Traffic Engineering staff. As part of these site investigations, no major traffic congestion was observed on the adjacent roads. The subsequent parking study completed by the applicants was not formally reviewed by Traffic Engineering staff as it pertains to the availability of on-street parking and traffic congestion and safety concerns were not raised by the Traffic Engineering Section.

**Hamilton Municipal Parking System (HMPS) (Planning and Economic Development Department)** has advised that there are concerns that no on-site parking



is available, which can create on-street parking pressures. Planning staff advise that Zoning By-law No. 6593 does not require onsite parking for either the bakery or take-out restaurant use. Parking for retail uses are only required above 450 sq m of floor area and parking for restaurants is only required should seating be provided. Therefore, the absence of onsite parking is not a zoning issue.

HMPS have also advised that on-street parking is available in the immediate surroundings but may be limited in its availability and that moderate complaint-based ticketing in the past has occurred on Murray Street East and Catharine Street North mostly due to parking outside of designated areas.

Finally, HMPS identified the need for an updated boulevard parking agreement as the existing agreement (registered in 1979) may not be up-to-date with respect to existing site conditions. HMPS provided further comments on the more recent parking study submitted by the applicants and advised that while the study reflects current site and operational conditions, as it was conducted in the winter it may not be reflective of peak parking demand in the other months. Further discussion on parking related matters is included in the Analysis and Rationale for Recommendation section of this Report.

## **PUBLIC CONSULTATION**

In accordance with the provisions of the *Planning Act* and Council's Public Participation Policy, Notice of Complete Applications and Preliminary Circulation was circulated to approximately 200 property owners and tenants within 120 m of the subject property on October 13, 2014, requesting public input on the applications. A Public Notice sign was also posted on the property on October 22, 2014. Notice of the Public Meeting was given, in accordance with the requirements of the *Planning Act*.

To date, five letters have been received from local residents. Concerns raised in the letters pertain to traffic and parking pressures during the lunch rush period, and a concern that the fronts of 312 and 314 Catharine Street North could be opened for commercial purposes resulting in impacts on Catharine Street North. General nuisance impacts due to the popularity of the existing business were also raised. It should be noted that none of the letters explicitly identified a concern that these issues have worsened due to the already occurred expansion. A review of these concerns is contained in the Analysis and Rationale for Recommendation section of this Report. The public comments are contained within Appendix "E".

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

1. The proposal has merit and can be supported for the following reasons:
  - (i) It is consistent with the PPS and conforms to Places to Grow (Growth Plan for the Greater Golden Horseshoe);

- (ii) It complies with the Hamilton-Wentworth Official Plan and the former City of Hamilton Official Plan with respect to policy direction that encourages the maintenance, renovation and rehabilitation of the existing residential dwelling and for the provision for a diversity of dwelling forms;
  - (iii) Subject to the proposed Official Plan Amendment, the overall proposal implements the vision of the West Harbour Secondary Plan in that it provides a local commercial use that maintains the predominant low density residential character of the existing Stable Area; and,
  - (iv) The proposed recognition of the already expanded business does not result in an intensification of the existing use while providing the long term certainty of land use permission for the both the bakery owners and local residents, in that the proposal would only permit the existing use on the subject lands.
2. The proposed Official Plan Amendment and Zoning By-law Amendment would serve to recognize the legally established non-conforming bakery at 314 Catharine Street North and permit the illegal expansion of Bonanza Bakery from 314 Catharine Street North onto 312 Catharine Street North. As discussed earlier in this Report, Bonanza Bakery consists of a commercial and wholesale bakery (i.e. sale of baked goods), as well, as a take-out restaurant component which includes a hot-food counter and a delicatessen counter (primarily to prepare sandwiches for customers). Related catering services are also undertaken. All of these uses existed within 314 Catharine Street North prior to the expansion. The only change in the existing operation is the relocation of the delicatessen use into the building at 312 Catharine Street North. The applicant has advised that this results in a much more efficient lunch time flow of customers such that customers can more quickly receive and pay for their food, reducing both line-ups out the door, and overall efficiency such that those people who drive to the bakery can more quickly depart, freeing up on-street parking. Both 314 Catharine Street North and 312 Catharine Street North contain an existing dwelling unit on the second floor.
3. Much of the discussion on whether the illegal expansion of the bakery has resulted in any new impacts centres around whether, as a result of the expansion, has the use intensified (i.e. has there been an increase in the number of customers attending the premises post expansion). It should be noted that the primary busy period for the use is at lunch time (11am to 2pm) where local residents and business employees attend the bakery to purchase lunch. Bonanza Bakery closes at 5:30pm so no evening / dinner rush occurs. This is important, as the busy period for the take-out operation occurs at midday. This reduces on-street parking pressures, such that when residents return from work,

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if they rely on street-parking, it is more likely that such parking would be available.

In order to address comments from Traffic Engineering staff and Hamilton Municipal Parking System staff (whom have questioned whether the expansion would increase traffic or parking demand), the applicant has provided a range of statistical data as well as a parking utilization study. In summary, the applicant has provided the following information:

- The applicant provided two years of sales figures that covers the period of approximately one year before the expansion to one year after the expansion. These figures indicate that gross sales on average ranged only 5% to 15% higher than pre-expansion gross sales. A discrepancy in the summer of 2013 occurred, according to the applicant, because a fire at a competing Portuguese bakery resulted in customers coming to Bonanza Bakery following the fire, but that in the following months, sales decreased back to average; and,
- The applicant has also advised that minor increases in gross sales are also explained by the increase in pricing for all goods due to the increase in minimum wage in Ontario, food cost increases, and expanded hot-food options with a higher price point, not generally by an increase in the number of customers.

Neither the Traffic Engineering Section nor Hamilton Municipal Parking System have received an increased number of complaints post expansion. The Traffic Engineering Section has also conducted a number of spot inspections during the lunch time rush and have advised that no major traffic congestion at surrounding intersections was observed. Concerns raised by the public are more general in nature and come from longer term residents that did not note whether parking problems have been exacerbated by the expansion. As noted above, the applicant has suggested that the efficiencies created by the expansion results in faster customer turnaround and subsequently less time parked on the street. Again, it should be noted that none of the uses within the building require dedicated onsite parking in Zoning By-law No. 6593, as no parking is required for retail uses under 450 sq m of gross floor area and restaurant parking is only required should seating be provided.

In order to address concerns raised by the public and by Hamilton Municipal Parking System that street parking is at a premium in the neighbourhood, the applicants also conducted an on-street parking assessment whereby, during various periods of day (including the lunch time rush period), all of the on-street parking spaces within the surrounding area were identified and observed to determine how many were occupied by vehicles and how many were available.

The study was conducted over a number of weeks and included three weekdays and one Saturday (the bakery is not open on Sunday). In total, 46 on-street parking spaces were identified in the immediate area (which includes both sides of Murray Street East from John Street North to Mary Street and both sides of Catharine Street North to its northern terminus and southerly approximately half the distance to Barton Street East). Hamilton Municipal Parking System did advise that three of them should not have been counted as they may not be legal street parking spaces.

The results of the study are that at the noon lunch rush, 59% of the on-street parking spaces were occupied by vehicles (i.e. 41% would have been available). That the percentage of occupied parking spaces dropped to 42% earlier in the morning, and to 46% later in the afternoon. However, in general terms, the spot inspections indicated that close to half of the available on-street parking spaces on the immediate streets remain available. Hamilton Municipal Parking System did caution that as the study was conducted in the winter months, it is unclear as to whether the results could be attributable to summer months. However, it is important to note that in summer months, no on-street parking spaces would be blocked by snow storage. Hamilton Municipal Parking System enforcement staff have ticketed at the location when complaints have occurred but such complaints or ticketing has not increased post-expansion.

Based on site visits from Planning Staff, and spot checks from Traffic Engineering staff and the parking study, Planning staff are generally satisfied that the Bonanza Bakery operation (i.e. post expansion) is not considerably more intense of a use than the previous operation. No change in built form has occurred and the front facades of both 312 and 314 Catharine Street North remain unchanged with no commercial access available.

4. The other parking related issue surrounding Bonanza Bakery is that the existing bakery at 314 Catharine Street North has had a commercial boulevard parking agreement in place since approximately 1979 for the boulevard along Murray Street East. A boulevard paving agreement for the front of 314 Catharine Street North has also been in place since the 1980's. However, as the agreement has existed for many years, the current situation on the ground is slightly different than the 1979 agreement (for example, required parking barriers where the curb isn't cut are not in place) and parking may be occurring in front of 314 Catharine Street North in the road allowance where the current agreement only permits paving (but not parking). Hamilton Municipal Parking System has advised that the boulevard parking agreement must be updated to better reflect the existing situation but there is no guarantee that it may include an additional parking space in front of Catharine Street North, as it may conflict with the existing building entrance.

In addition, there is also an existing boulevard encroachment agreement registered on title for 314 Catharine Street North to address portions of the existing building and steps that encroach onto 314 Catharine Street North. Traffic Engineering staff have advised that this agreement also must be updated to reflect existing steps, an awning, and certain mechanical intrusions (i.e. vents) that may encroach onto the Murray Street East road allowance. The applicants have been working with the appropriate staff to address the alterations to the above noted agreements, but at the time of writing this Report, updated agreements have not yet been finalized.

While commercial development is subject to Site Plan Control, as the proposal does not contemplate any new construction or alteration to the exterior of the building, or any other exterior off-street works, there would be no Site Plan Control Application that could be used to ensure the required boulevard encroachment agreement and boulevard parking agreements are updated. Therefore, the implementing By-law is proposed to include an 'H' Holding Provision that will require such works to be completed. While the use already exists and may be operating without required permits, continued By-law enforcement would occur if the 'H' Holding Provision is not removed and the bakery continues to operate within 312 Catharine Street North.

5. As discussed in the policy review section of this Report, due to the location of the bakery at the corner of two local roads, it is proposed that instead of redesignating the subject lands to "Local Commercial" and rezoning the lands to the "H" (Community Shopping and Commercial, Etc.) District, it would be more reflective of the existing character of the neighbourhood and the existing residential character of the subject lands that maintaining the existing "Low Density Residential" land use designation and "D" (Urban Protected Residential – One and Two Family Dwellings, Etc.) District zoning would be more appropriate. This provides certainty to the neighbourhood that should the use cease, that other commercial uses would not automatically be permitted at this location.

Therefore, the planning instruments would maintain the existing Official Plan designation and Zoning but utilize a Site Specific Policy Area in the Official Plan and Site Specific Zoning in the Zoning By-law to note that the bakery use (retail and wholesale bakery, take-out restaurant, and catering business) be permitted only within the buildings existing on the day of the passing of the by-law. This will ensure the residential character of the street is maintained and that the existing buildings could not readily be demolished and replaced with buildings of a full commercial architectural character or otherwise be significantly modified.

The implementing By-law is proposed to recognize the existing building location by permitting the existing 0 m side yard setbacks (instead of 1.2 m being required), 2.4 m rear yard setback (instead of 7.5 m), and 1.5 m front yard

setback (instead of 6 m). The By-law would also recognize existing porches and other architectural features that may encroach into required side and front yards and to recognize that no parking is provided for the two upper-storey residential units whereas two would be required (one per dwelling unit as two buildings now are connected). The lack of existing parking also represents a legally established non-conforming situation. The By-law would also recognize the existing 13.8 m lot width (whereas 18 m is required) and 517 sq m of lot area (whereas 570 sq m is required). These modifications can be supported as they are required only to recognize the existing location of the buildings and lot configuration, and the setback reductions are similar in nature to the existing streetscape character of both Murray Street East and Catharine Street North. With regards to parking, an existing boulevard parking agreement permits parking in the Murray Street East road allowance but this cannot be counted as required parking (this agreement is required to be updated).

6. The Public Consultation section of this Report noted that five pieces of correspondence were received from local residents pertaining mostly to traffic and parking concerns (see Appendix “E”). In this regard, based on a review of the existing traffic situation by the Traffic Engineering Section of the Public Works Department, it was determined that overall, no major traffic congestion or public safety issues were identified. While Hamilton Municipal Parking System staff did caution that on-street parking pressures could be exacerbated in summer months, based on a review of the parking study submitted, it was shown that even during busy lunch time hours, some on-street parking remained available. It is also an issue that has generally existed for many years as the bakery has been in the neighbourhood for over 50 years.

Even if the applications were denied, it was confirmed, based on discussions with legal services staff, that the bakery operations at 314 Catharine Street North could continue indefinitely at that location (which included the take-out restaurant use with hot-food service and delicatessen counter). This is because the bakery operations at 314 Catharine Street North are considered a legally established non-conforming use with respect to the Zoning By-law. Evidence has not been provided to show that the expansion has resulted in an exacerbation of the parking issue. Finally, the applicants’ planning consultant has provided information to suggest that efficiencies created by the new design should reduce traffic and parking pressures in the neighbourhood as customers can purchase their food quicker than previously, and would not need to park for as long, subsequently freeing more spaces.

With regards to nuisance impacts from either bakery staff (suggestion of dumping of mop buckets into exterior storm sewers) or from customers (noise and littering), these concerns have been passed onto the applicant and staff were advised that bakery staff issues were isolated incidents that the bakery will strive

to improve. The applicants have recently advised staff that additional waste receptacles have been placed outside the bakery entrance to reduce possible littering. Existing noise from customers is also limited to the peak lunch rush and only in the area immediately outside the main bakery entrance on Murray Street East. It is not a matter that the Zoning By-law could address. The location of existing dumpsters on the east side of the lands has existed for many years and the applicant is working with municipal staff on their location as they may conflict with existing and updated boulevard parking agreements.

## **ALTERNATIVES FOR CONSIDERATION**

If the applications are denied, the lands at 314 Catharine Street North would still be able to be utilized for their existing bakery use (with associated take-out restaurant use) as the legally-established non-conforming use was not lost when the bakery expanded into 312 Catharine Street North. However, if the applications were denied, all associated bakery uses at 312 Catharine Street North would have to cease. The lands at 312 Catharine Street North continue to permit a single detached dwelling or two family dwelling (duplex or semi-detached dwelling).

## **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).

## **APPENDICES AND SCHEDULES ATTACHED**

- Appendix “A”: Location Map
- Appendix “B”: Draft Official Plan Amendment
- Appendix “C”: Draft Zoning By-law Amendment
- Appendix “D”: Survey Plan and Floor Plans
- Appendix “E”: Public Comments

:GM/th