



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	February 2, 2016
SUBJECT/REPORT NO:	Sign Variance Application SV-15-014 for the Property Known as 766 Burlington Street East, Hamilton, Denied by the Director of Planning and Chief Planner, Planning Division, and Appealed by the Applicant (PED16018) (Ward 3)
WARD(S) AFFECTED:	Ward 3
PREPARED BY:	Daniel Barnett Planner (905) 546-2424 Ext. 4445 Steve Robichaud Director of Planning and Chief Planner
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That the Appeal of Sign Variance Application SV-15-014, by **Andre Leblanc (726195 Ontario Inc), Owner**, to legalize a digital roof top Billboard Sign that was established without a permit for the property located at 766 Burlington Street East, Hamilton, as shown on Appendix “A” to Report PED16018, be **denied** on the following basis:

- (a) That the requested variances are not in keeping with the general intent and purpose of Sign By-law No. 10-197;
- (b) That the requested variances do not meet the tests of Sign By-law No. 10-197.

EXECUTIVE SUMMARY

The applicant submitted Sign Variance Application SV-15-014, which proposed to permit a digital Billboard Sign on the roof of an existing building (see Appendices “B” and “C”). A previous static Billboard Sign was located on the roof of the existing building and was removed and replaced with a digital Billboard Sign without a permit. Variances from the provision of the Sign By-law are required to legalize the illegally-established digital roof top Billboard Sign.

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The variances were denied by the Director of Planning and Chief Planner, on October 22, 2015. The applicant appealed the decision on October 29, 2015 and requested the proposed Sign Variance Application be considered by the Planning Committee.

Alternatives for Consideration – See Page 9

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 to consider an appeal of the decision by the Director of Planning to deny a sign variance application.

HISTORICAL BACKGROUND

On August 12, 2010, Council approved Sign By-law No. 10-197. Part 6.0 of By-law No. 10-197 establishes the parameters for dealing with Sign Variance Applications (section 6.5), and the process to appeal a decision on a the Sign Variance Application (section 6.6) (see Appendix “D”).

On June 5, 2015, staff received an application for a Sign Variance to legalize a digital roof top Billboard Sign that was established without permit and which did not conform to the applicable provisions of Sign By-law No. 10-197.

The following variances were applied for:

- 1) to permit a sign to be located on the roof of the building;
- 2) to increase the maximum sign area;
- 3) to increase the maximum sign width;
- 4) to permit an animated sign;
- 5) to increase the maximum percentage of the sign that may be used for a read-o-graph;

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- 6) to reduce the minimum setback from another Billboard Sign and from the property line; and,
- 7) to permit a Billboard Sign on a property that is neither vacant nor undeveloped.

On October 22, 2015, the Sign Variance Application was denied by the Director of Planning and Chief Planner. Notice was subsequently sent to the applicant advising them of the decision. On October 29, 2015, the applicant submitted a letter to the Office of the City Clerk, appealing the decision by the Director of Planning and Chief Planner to deny the variances, and requested that matter be considered by the Planning Committee (see Appendix “E”).

The applicant, in their appeal letter, was of the opinion that the majority of the variances were already existing with the previous Billboard Sign that was removed prior to the submission of the Sign Variance Application and that there are “multiple signs across the City moving towards this preferred option to display signs” (see Appendix “E”).

Details of Submitted Application

Location:	766 Burlington Street East, Hamilton (Fine Lines Signs Co.)
Owner	Andre Leblanc (726195 Ontario Inc.)
Applicant:	John Ariens, IBI Group
Property Description:	<u>Frontage:</u> 30.48 m <u>Lot Depth:</u> 60.96 m <u>Area:</u> 1,821.1 sq m

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

City of Hamilton Sign By-law No. 10-197

By-law No. 10-197 provides regulations for signs and other advertising devices within the City of Hamilton.

Section 1.1 defines a Billboard Sign as “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

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the property where the sign is displayed and is either single faced or double faced but does not include a Ground Sign”.

The sign in question is not supported by the building as in the case of a Wall Sign but is rather located on top of the building. Signs located on top of the roof are prohibited in the Sign By-law.

The sign in question displays advertisements for goods, products, and services that are not sold or offered on the property and therefore constitutes a Billboard Sign.

Section 5.1.1 outlines the types of signs that are prohibited. Section 5.1.1 (b) states that any sign supported entirely or partly by the roof of a building or structure, and which projects above the roof, is prohibited. The proposed Billboard Sign is located on the roof of an existing building and projects above the roof of the existing building and therefore does not comply with the provisions of the By-law that prohibit signs being located on the roof and projecting above the roof.

Section 5.10 outlines the requirements and restrictions on Billboard Signs. Section 5.10.2 (b) restricts a Billboard Sign to a “maximum sign area of 18 sq. m.” The proposed Billboard Sign has a sign area of 18.7 sq. m and therefore does not conform to the maximum sign area of 18 sq. m.

Section 5.10.2 (c) restricts a Billboard Sign to a “maximum height of 12 m and maximum width of 4m.” The proposed Billboard Sign has a sign width of 6.1 m and therefore does not conform to the maximum sign width of 4 m.

Section 5.10.2 (d) restricts the content of the sign to “not animated, except a Tri-vision Billboard.” The proposed sign is to be a digital sign and therefore does not conform to the provisions that prohibit animated signs.

Section 5.10.2 (e) restricts the content of the sign as “may allocate a maximum of 50% of the sign face to a read-o-graph.” The proposed Billboard Sign is using an electronic message display which comprises 100% of the sign area which is therefore not permitted.

Section 5.10.2 (g) restricts the location of a Billboard Sign to “not less than 300 m from another Billboard Sign.” The Billboard Sign is located 95 m from another Billboard Sign and therefore does not comply with the minimum setback of 300 m.

Section 5.10.2 (i) restricts the location of a Billboard Sign to “not less than 15 m from any property line.” The Billboard Sign is located 5.5 m from the front lot line and 1.5 m from the easterly side lot line and therefore does not conform to the minimum setback of 15 m.

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Section 5.10.2.(j) restricts the location of a Billboard Sign to “vacant, undeveloped property zoned commercial or industrial.” The Billboard Sign is located on a commercial property which contains an existing commercial building and an existing business and is therefore neither vacant nor undeveloped. Therefore the sign does not conform to restrictions that only permit Billboard Signs on vacant and undeveloped commercial and industrial properties.

Section 5.10.3 outlines that where a property on which a Billboard is displayed ceases to be vacant or undeveloped, the sign owner shall remove the Billboard from the property. Section 5.10.2 (j) and 5.10.3 of the By-law outlines that the vision of the City is that Billboards Signs will not be established on developed lands and Billboard Signs should not be retained once the property is developed, and as such the vision is that Billboard Signs will disappear over time as lands develop. Therefore, removal of the previous static Billboard Sign and replacing the sign with a digital Billboard Sign facilitates the long term continuation of the Billboard Sign rather than ensuring that the Billboard Sign disappears over time.

Section 3.4 addresses existing signs and states “Any sign that is lawfully displayed on the day this By-law comes into force may continue to be displayed provided it is not substantially altered in a manner that would bring it into non-compliance or increase its non-compliance with this By-law. Anything done to preserve the condition of a sign or to prevent the deterioration of a sign, including the restoration of a sign by removing or replacing worn out, missing, damaged or broken parts, or a change to the message or copy displayed by the sign does not in itself constitute a substantial alteration.”

The static roof top Billboard Sign was existing prior to the By-law coming into effect and therefore would constitute an existing sign under Section 3.4. However, the static roof top Billboard Sign has since been removed and therefore the sign that existed prior to the By-law coming into effect no longer exists and the illegally established digital roof top Billboard Sign cannot be recognized as an existing sign.

The intent of the By-law is that non-conforming signs will disappear and approval of the proposed variance to permit a digital roof top Billboard Sign is contrary to this intent. Furthermore, the replacement of the sign with a digital Billboard Sign constitutes a substantial alteration and increases the non-compliance of the Billboard Sign, and therefore replacement of the sign with a digital Billboard would not have maintained the status of an existing sign, even if the previous static Billboard Sign had not been removed.

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City of Hamilton Zoning By-law No. 05-200

The subject property is zoned “M5” General Industrial Zone in the City of Hamilton Zoning By-law No. 05-200. The “M5” General Industrial Zone permits a range of industrial uses.

As the digital roof top Billboard Sign is not located in any required parking, landscaped strip, manoeuvring space, loading space, planting strip, or access driveway, the proposed Sign conforms to the applicable provisions of the City of Hamilton Zoning By-law No. 05-200.

RELEVANT CONSULTATION

Departments / Agencies having no comments or concerns:

- Traffic Engineering and Operations Section (Public Works Department);
- Growth Management (Development Engineering); and,
- Building Services (Zoning).

Building Services Division (Building Construction Section)

Comments received from Building Services Division identified the provisions of the Sign By-law that the proposed sign would need to comply with, and identified whether the proposed sign complied or did not comply with the By-law requirements. The comments from Building Services Division outlined that the proposed sign did not conform to a total of eight provisions of the By-law as outlined in the Policy Implications and Legislated Requirements Section of this Report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The static roof top Billboard Sign that previously existed did not comply with a number of provisions of the Sign By-law but was permitted to continue to be displayed on the basis of the Existing Sign provisions of the Sign By-law. Upon the removal of the static roof top Billboard Sign any new sign was required to comply with the provisions of the Sign By-law. The digital roof top Billboard Sign that was established did not receive a permit, nor does the digital roof top Billboard Sign comply with the provisions of the Sign By-law.

The City of Hamilton may approve a Sign Variance Application if the general intent and purpose of the 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 “D”).

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The Sign Variance Application was denied by the Director of Planning and Chief Planner, Planning Division, on October 22, 2015. The reasons for the refusal were that the proposed sign variances did not maintain the general intent and purpose of the Sign By-law and did not meet the four tests for sign variances provided in Section 6.5 of By-law No. 10-197 (see Appendix "D").

The variances seek to establish a roof top Billboard Sign which is explicitly prohibited in the Sign By-law. Further, the variances seek to maintain a Billboard Sign on a property that is neither vacant nor undeveloped whereas Billboard Signs are supposed to disappear once lands are developed and are not to be located on lands that have buildings and have been developed. The Sign By-law also prohibits animated signs whereas the proposal is to establish a digital sign. The variances to legalize the digital roof top Billboard Sign are to legalize a form of signage that is not permitted, and therefore the variances do not maintain the general intent and purpose of the Sign By-law.

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

- Special circumstances or conditions applying to the land, building or use referred to in the application;
- 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;
- Whether such special circumstances or conditions are pre-existing and not created by the Sign Owner or applicant; and,
- 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.

The four tests are evaluated in the following comments:

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

A static rooftop third party Billboard Sign existed on the property prior to the sign being illegally replaced with a digital rooftop third party Billboard Sign. The applicant advised that the conversion was undertaken to increase the usability of the sign by increasing the number of third party advertisements the sign can display. The intent and purpose of increasing the number of third party advertisements the sign can display is to

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increase the financial viability of the sign. Therefore there are no special circumstances or conditions that apply to the land, building or use.

- 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;

The proposed variances are to legalize the replacement of an existing static Billboard Sign with a digital Billboard Sign for the purpose of increasing the number of third party advertisements the sign can display, in order to increase the financial viability of the sign. It is intended that signs that existed prior to the Sign By-law, which would now be prohibited, with time will be discontinued and replaced with signs that are permitted. Approval of the proposed variances would run contrary to this by facilitating the retention of a prohibited type of sign. Approval of the variances would also maintain a sign that has the potential to create a visual distraction that can lead to accidents along this section of Burlington Street East. Therefore, strict application of the By-law would not create practical difficulties, nor would it create unnecessary or unusual hardship, and would protect the safety of motorists and pedestrians along Burlington Street East.

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

The need for the variances is because the applicant wishes to legalize a Billboard Sign that was replaced illegally by the sign owner from a static Billboard Sign to a digital Billboard Sign. The replacement of the sign to a digital Billboard Sign was undertaken by the sign owner to increase the number of advertisements the Billboard can display and thereby increase the financial viability of the Billboard Sign. Therefore, the situation is not pre-existing and has been created by the sign owner and applicant.

- 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.

The Billboard Sign is on a rooftop along a major arterial road that leads into the City from the Queen Elizabeth Way. Rooftop Signs are not in keeping with the character of the area and legalizing the replacement of the Billboard Sign to a digital sign would further entrench a prohibited type of sign that is not in keeping with the character of the area. Furthermore, the proposed digital rooftop sign has the potential to cause a visual distraction for motorists driving along Burlington Street East which impacts the safety of motorists and pedestrians in the area. Therefore, the Billboard Sign that is subject to the variances will alter the essential character of the area in which the Billboard Sign will be located.

ALTERNATIVES FOR CONSIDERATION

Option 1

Council may uphold the recommendation of the Director of Planning and Chief Planner, Planning Division, to refuse the proposed variances as they do not maintain the general intent and purpose of the Sign By-law. The applicant would not be able to legalize the digital roof top Billboard Sign and would be required to remove the digital roof top Billboard Sign that was established illegally. The applicant would still be permitted to establish any sign in accordance with the City of Hamilton Sign By-law No. 10-197.

Option 2

Council may deny the recommendation of the Director of Planning and Chief Planner, Planning Division, and support the proposed variances, as submitted. However, it is the opinion of staff 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

1.6 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.

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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

3.3 Improve employee engagement.

3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A": Location Map

Appendix "B": Elevations and Renderings

Appendix "C": Site Plan

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

Appendix "E": Appeal Letter

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