



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

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	September 19, 2017
<b>SUBJECT/REPORT NO:</b>	Sign Variance Appeal SV-16-020 for the property known as 442 Millen Road, Stoney Creek, Denied by the Director of Planning and Chief Planner and Appealed by the Owner (PED17145) (Ward 10)
<b>WARD(S) AFFECTED:</b>	Ward 10
<b>PREPARED BY:</b>	Danielle Beck (905) 546-2424 Ext. 1285
<b>SUBMITTED BY:</b>	Steve Robichaud Director, Planning & Chief Planner Planning and Economic Development
<b>SIGNATURE:</b>	

**RECOMMENDATIONS**

That the Appeal of Sign Variance Application SV-16-020, by **Calitor Group Limited, Owner**, to permit third party advertising on the existing Ground Sign, for the property located at 442 Millen Road, Stoney Creek, as shown on Appendix “A” to Report PED17145, 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; and,
- (b) That the requested variances do not meet the tests of Sign By-law No. 10-197.

**EXECUTIVE SUMMARY**

The owner submitted Sign Variance Application SV-16-020 on October 13, 2016, to permit the existing location of the Ground Sign to be 34.7 metres from the Queen Elizabeth Way (QEW); to recognize that the existing sign does not provide municipal addressing above or below the sign face area; to permit the existing sign face area of 50.14 square metres for a double sided sign; and, to permit third party advertising on 100% of the electronic message display (see Appendices “B” and “C” to Report PED17145).

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One of the requested four variances was denied by the Director of Planning and Chief Planner, on June 30, 2017. The three variances that were supported were; to permit the existing Ground Sign to be located 34.7 metres from the Queen Elizabeth Way (QEW); to recognize that the existing sign does not provide municipal addressing above or below the sign face area; and, to permit the existing sign face area of 50.14 square metres for a double sided sign.

The owner appealed the decision to deny the one variance to permit third party advertising on 100% of the electronic message display on July 14, 2017, and requested the proposed Sign Variance Application be considered by the Planning Committee.

***Alternatives for Consideration – See Page 7***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: None

Staffing: None

Legal: The application is subject to the *Municipal Act*, and there are no requirements for a Public Meeting. By-law No. 10-197 requires the City Clerk to notify the owner once a hearing date before the Planning Committee has been fixed to consider an appeal of the decision by the Director of Planning and Chief Planner 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 Sign Variance Application (section 6.6) (see Appendix “D” to Report PED17145).

The original Ground Sign was constructed without approvals from the City of Hamilton, but received a Ministry of Transportation permit to construct a pylon sign on the subject lands issued on March 15, 2006. If the applicant were to have applied for a City of Hamilton permit for the original Ground Sign, it would have met the former provisions of the City of Stoney Creek Sign By-law No. 3042-89 at the time of its construction.

Section 3.4 (Existing Signs) of City of Hamilton Sign By-law No. 10-197 permits existing signs that are lawfully displayed to continue to be displayed provided that the signs are not substantially altered in a manner that would bring them further into non-compliance.

In 2012, the applicant applied for a Sign Variance (SV-12-008) which proposed to modify the existing Ground Sign with a 100% electronic message display, whereas Hamilton Sign By-law No. 10-197 permits a maximum 50% of the sign face to be a readograph or electronic display, provided that no copy displayed shall be displayed for less than three seconds, during which there shall be no movement or change in colour or intensity of illumination. Increasing the maximum electronic display message from the permitted 50% to 100% would have constituted a substantial alteration that would bring the existing sign into non-compliance and required the previous Sign Variance Application to address this and other deficiencies.

In addition to the proposed variance to permit 100% electronic message display, the existing location of the Ground Sign required additional variances. The front yard setback to the existing Ground Sign is 3.0 metres, whereas Hamilton Sign By-law No. 10-197 requires a minimum 7.1 metres. The height of the existing sign is 9.5 metres, whereas Hamilton Sign By-law No. 10-197 permits a maximum 7.5 metres. Lastly, the sign face area is 23 square metres, whereas Hamilton Sign By-law No. 10-197 permits a maximum 18 square metres.

Staff did not support the Sign Variance Application and the application was denied. The applicant appealed the decision of the Director of Planning and Chief Planner to Planning Committee. The appeal was heard at the February 4, 2014 Planning Committee meeting. Planning Committee approved the appeal and the applicant was permitted to modify the existing Ground Sign with 100% digital display and recognize the existing location, height and size of the Ground Sign.

Through the previous review of Sign Variance Application SV-12-008, the Building Construction Section staff deferred to the Ministry of Transportation to enforce the provisions of the By-law that affect their corridors; if the MTO was supportive of the variance then the City of Hamilton deferred to the Ministry's position. Further direction has been provided since the last application, clarifying that all signs must comply with both the MTO and the City of Hamilton requirements. Therefore, there have been no variances granted recognizing the proximity to the Queen Elizabeth Way (QEW), which has resulted in additional variances being required, in addition to the requested third party advertising.

Furthermore, the height increase, sign face increase and design of the sign requested in the previous Sign Variance Application SV-12-008 were inaccurate. The previous application proposed to recognize a sign height of 9.06 metres, whereas the height is 9.49 metres; and, a sign face area of 50.14 square metres, whereas the MTO permit states the sign face area is 46.43 square metres.

Through the detailed review of the previous application and in consultation with the MTO, it was determined that the height of the existing Ground Sign was 9.49 metres and was the height that was approved through Planning Committee Report PED14023. However, through Planning Committee Report PED14023, the sign face area that was approved was 46.43 square metres. As more accurate plans have been provided with this application, it has been determined that the sign face area is 50.14 square metres.

In addition, the previous Sign Variance application noted that municipal addressing was going to be provided, but has not been provided. These discrepancies have resulted in the additional variances below and the need to obtain a new sign permit from the MTO:

- a) To permit a sign to be located within 400 metres of the right of way of the Queen Elizabeth Way;
- b) To increase the maximum sign face area;
- c) To not provide municipal addressing on the sign face; and,
- d) To permit third party advertising on 100% of the electronic message display.

On June 30, 2017, the variance to permit third party advertising on 100% of the electronic message display was denied while the other three variances were approved by the Director of Planning and Chief Planner (see Appendix "E" to Report PED17145). Notice was subsequently sent to the owner advising of the decision. On July 14, 2017, the owner appealed the decision by the Director of Planning and Chief Planner to deny the one variance (see Appendix "F" to Report PED17145).

### **Details of Submitted Application**

<b>Location:</b>	442 Millen Road, Stoney Creek
<b>Owner</b>	Calitor Group Limited
<b>Applicant:</b>	Calitor Group Limited
<b>Property Description:</b>	<u>Frontage:</u> Millen Road: 46.129 metres Belgarden Avenue: 44.121 metres <u>Lot Depth:</u> 220.9 metres (approximately)

Area: 19,127.7 square metres (approximately)

## **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 5.1.1 of the By-law specifies which signs are not to be displayed or permitted. Section 5.2 specifies the regulations in which a Ground Sign can be lawfully erected (see Appendix “H” to Report PED17145). The proposed variance for third party advertising on 100% of the electronic message display, if approved, would permit a sign that is in contravention of four provisions of the Sign By-law. While three of the requested variances were supported, the fourth requested variance could set a precedent for other signs of a similar nature to be located within the City of Hamilton.

### Hamilton Zoning By-law No. 05-200

The subject property is zoned Prestige Industrial (M3) Zone in the Hamilton Zoning By-law No. 05-200, which permits a range of industrial uses.

The existing Ground Sign received approval for a Minor Variance Application (SC/A-13:238) which permits the sign to be located within a landscaped area. Furthermore, as the existing Ground Sign is not located in any required parking, manoeuvring space, loading space, or access driveway, the proposed Ground Sign conforms to the Hamilton Zoning By-law No. 05-200.

## **RELEVANT CONSULTATION**

For comments received, refer to Appendix “E” to Report PED17145, Pages 4 to 7.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The following variances were required:

- 1) To permit a sign to be located within 400 metres of the right of way of the Queen Elizabeth Way;
- 2) To increase the maximum sign face area;

- 3) To not provide municipal addressing on the sign face; and,
- 4) To permit third party advertising on 100% of the electronic message display.

#### *Setback from Provincial Highway*

The existing Ground Sign is located approximately 34.7 metres from the QEW. Due to the proximity of the subject lands from the QEW, any Ground Sign would require relief from this provision as the entire lands are located within 400 metres of the right of way of the QEW. While the requested location of the proposed Ground Sign does not conform to Section 5.1.1 (f) of Hamilton Sign By-law No. 10-197, this can be viewed as a special circumstance that applies to the land and staff was supportive of this variance as outlined in Appendix “E” to to Report PED17145.

#### *Maximum Sign Area*

Based on the frontage of the property (46.129 metres), a Ground Sign with a maximum sign area of 18.0 square metres for a single faced Ground Sign or 36 square metres for a double or multi-faced Ground Sign is permitted. The existing Ground Sign will have a sign face area of 25.08 square metres per side (50.16 square metres total).

The existing 50.16 square metre double faced Ground Sign constitutes a Ground Sign that is 14.16 square metres larger than currently permitted. The intent of restricting the maximum sign area of a Ground Sign to 36 square metres for a double sided Ground Sign is to ensure that the Sign is of an appropriate size and scale and that the Sign maintains the streetscape character of the area. As this was a pre-existing situation, staff was supportive of this variance as outlined in Appendix “E” to to Report PED17145.

#### *Requiring Municipal Addressing*

The existing Ground Sign provides 100% digital message display and has no opportunity to provide municipal addressing. The intent of providing municipal addressing on Ground Signs is to provide way finding for the site for customers and emergency services. The existing Ground Sign is located on a large property with twenty-four (24) commercial / industrial units, in three separate buildings, with associated parking, loading and landscaping. Adequate municipal addressing is provided on the building façade to provide wayfinding for customers and emergency services. Therefore, staff was supportive of this variance as outlined in Appendix “E” to to Report PED17145.

### *Third Party Advertising*

The existing Ground Sign provides 100% digital message display, of which the applicant wants to permit third party advertising. The intent of permitting advertising is that it be limited to the businesses, activities, products or services located on the subject lands to limit confusion of consumers attending the site for a business, activity, product or service that is not located on the same lands. There are no special circumstances that apply to the lands that would contribute to the proposal's inability to meet the requirements of the By-law. As outlined in further detail in Appendix "E" to Report PED17145, staff did not support this variance.

## **ALTERNATIVES FOR CONSIDERATION**

### **Option 1**

Council may uphold the recommendation of the Director of Planning and Chief Planner, Planning Division, to refuse one of the four proposed variances as it does not maintain the general intent and purpose of the Sign By-law. The owner would be permitted to advertise the businesses and services offered on the subject lands on the existing electronic message display Ground Sign.

### **Option 2**

Council may deny the recommendation of the Director of Planning and Chief Planner, Planning Division, and support the proposed variance, as submitted. However, it is staff's opinion that this option does not maintain the general intent and purpose of the Hamilton Sign By-law No. 10-197.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

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## **APPENDICES AND SCHEDULES ATTACHED**

- Appendix "A": Location Map
- Appendix "B": Site Plan
- Appendix "C": Elevations and Digital Display of proposed Ground Sign
- Appendix "D": Section 6.0 of Sign By-law No. 10-197
- Appendix "E": Sign Variance Application Report SV-16-020
- Appendix "F": Appeal Letter
- Appendix "G": Picture of Existing Ground Sign
- Appendix "H": Definitions and Excerpts of Section 5.1 and 5.2 of Sign By-law No.10-197

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