

SIGN VARIANCE APPLICATION – SV-17-001

ADDRESS: 430 McNeilly Road and 1040 South Service Road (Stoney Creek)

Owner: Losani Homes (1998) Limited (Attn: Fred Losani)
Applicant: Jones Neon Displays (Attn: Jeremy Kuyvenhoven)
Date Application Received: December 9, 2016

Background:

The subject lands are located at the south-east corner of the South Service Road and McNeilly Road in Stoney Creek (see Appendix "A") and are currently developed with two (2) industrial / commercial buildings, consisting of eleven (11) units, with associated parking, loading and landscaping. The subject lands have been reviewed through an approved Site Plan Application (DA-02-126) to construct the buildings, a Zoning By-law Amendment Application to remove the Holding Provision (By-law No. 05-365), and a Consent Application (SC/B-15:90) to add lands from 432 McNeilly Road in 2015.

At the time of the submission of this Sign Variance Application, only one Ground Sign had been erected, without approval of a permit (see Appendix "B"). While the existing Ground Sign is noted to be removed, (an email from the agent dated December 15, 2016) as of March 6, 2017, the proposed second Ground Sign has been constructed (see Appendix "F"). To date, permits from the Ontario Ministry of Transportation (MTO) and the City of Hamilton have not been obtained to permit the new Ground Sign.

Proposed Variances:

The applicant is proposing to permit a new electronic message display Ground Sign along the South Service Road frontage (see Appendix "C"):

The requested variances for the electronic message Ground Sign are as follows:

1. Notwithstanding Section 5.1.1(f) of Hamilton Sign By-law No. 10-197, the proposed Ground Sign will be located 54.5 metres from the right of way of the Queen Elizabeth Way (QEW), whereas Hamilton Sign By-law No. 10-197 does not permit a sign to be displayed within 400.0 metres of the right of way of Highway 403, the Queen Elizabeth Way, the Lincoln M. Alexander Parkway or the Red Hill Valley Parkway.
2. Notwithstanding Section 5.2.2(e) of Hamilton Sign By-law No. 10-197, the proposed Ground Sign is 27.6 square metres for a single-faced Ground Sign or 55.2 square metres for a double-faced Ground Sign, whereas Hamilton Sign By-law No. 10-197 permits a maximum sign area of 0.3 square metres for every 1.0 metres of frontage along which the Ground Sign is located, not to exceed a total sign area of 18.0 square metres for a single-faced Ground Sign or 36.0 square metres for a double or multi-faced Ground Sign.

3. Notwithstanding Section 5.2.2(f) of Hamilton Sign By-law No. 10-197, the proposed Ground Sign is proposing a height of 8.53 metres, whereas Hamilton Sign By-law No. 10-197 permits Ground Signs to have a maximum height of 7.5 metres.
4. Notwithstanding Section 5.2.2.(g)(iii) of Hamilton Sign By-law No. 10-197, the proposed Ground Sign is proposing to allocate 87% of their sign face to electronic message display, whereas Hamilton Sign By-law No. 10-197 permits a maximum 50% of the sign face area to a readograph or electronic message display provided that no copy displayed on an electronic message display shall be displayed for less than three second, during which there shall be no movement or change in colour or intensity of illumination.

Plans/Drawings/Photos Submitted with Application:

Location Map (Appendix "A")
Picture of Existing Ground Sign (Appendix "B")
Site Plan (Appendix "C")
Sign Elevations (Appendix "D")
Sign Details (Appendix "E")
Picture of Constructed (Proposed) Ground Sign (Appendix "F")

Preliminary Staff Assessment:

Staff are supportive of the variance recognizing the location of the Ground Sign in relation to the proximity to the QEW since any proposed Ground Sign along the frontage of the property would result in this variance being required. Further analysis is provided in the Evaluation section below.

Staff are not supportive of the proposed electronic message Ground Sign and are of the opinion that the proposed Ground Sign does not meet the intent of the By-law as per the 4 tests as set out in Section 6.5 of By-law No. 10-197 with respect to the size of the sign face and the electronic message display as well as the height of the sign; the basis for not supporting these variances; and, are further analyzed in the Evaluation section below.

Circulation

The application for the requested variances was circulated on December 22, 2016, to internal departments / divisions.

The Growth Management (Development Engineering) Section, and Corridor Management Section indicated that they have no concerns or objections to the approval of the proposed Sign Variance Application.

The Building, Engineering and Zoning Section have reviewed the application, and note the following:

1. "The applicant is requesting variances to Sign By-law 10-197 to permit the installation of a double faced ground sign along the South Service Road street line.
2. Building Division's records indicate that the recognized use is two (2) multi-tenant buildings including office space for Losani Homes, which is permitted.
3. The lands are subject to DA-02-126.
4. The location of the proposed ground sign as shown on the submitted site plan complies with the requirements of the Zoning By-law.
5. Zoning Examination staff does not review the proposed sign for compliance with Sign By-law 10-197. As such, the Building Construction Section should be contacted for their review of the proposal regarding Sign By-law 10-197.
6. Installation of the proposed sign is subject to the issuance of a building permit in the normal manner.
7. The designer shall ensure that the fire access route conforms to the Ontario Building Code."

The Building Construction Section has reviewed the Sign Variance Application and note the following:

1. "According to Section 5.1.1(f) of the Sign By-law 10-197, "***(f) any sign within 400.0 m of the right of way of Highway 403, the Queen Elizabeth Way, the Lincoln M. Alexander Parkway or the Red Hill Valley Parkway that is visible from the travelled portion of the right of way.***" The proposed Ground Sign is within 54.5 m of the right of way of the Queen Elizabeth Way. Therefore the proposed Ground Sign does not conform to the Sign By-law 10-197.
2. According to Section 5.2.2(e) of the Sign By-law 10-197, "***(e) maximum sign area of 0.3 m² for every 1.0 m of the frontage along which the Ground Sign is located, not to exceed a total sign area of 18.0 m² for a single-faced Ground Sign or 36.0 m² for a double or multi-faced Ground Sign.***" Based on a frontage of 180.71 m the maximum sign area for all Ground Signs that front onto the South Service Road is 18.0 m². The sign area of the proposed Ground Sign that fronts onto the South Service Road frontage is 27.60 m² or 55.20 m² for a double-faced Ground Sign. Therefore the proposed Ground Sign does not conform to the Sign By-law 10-197.
3. According to Section 5.2.2(f) of the Sign By-law 10-197, "***(f) maximum height of 7.5 m.***" The height of the proposed Ground Sign is 8.53 m. Therefore the proposed Ground Sign does not conform to the Sign By-law 10-197.
4. According to Section 5.2.2(g)(i) of the Sign By-law 10-197, "***(g)(i) includes the municipal address of the property on which the Ground Sign is displayed shown at the top or the bottom in numerals that are a minimum height of 15.0 cm.***" The proposed Ground Sign does include the municipal address of the property

shown at the top in numerals that are 35 cm in height. Therefore the proposed Ground Sign does conform to the Sign By-law 10-197.

5. According to Section 5.2.2(g)(ii) of the Sign By-law 10-197, "**(g)(ii) includes one or more of the following copy that is a minimum height of 15.0 cm: 1. The name of the business; 2. The registered trademark of the business; 3. The ownership of the business; or 4. The name of the activity, product or service available.**" The proposed Ground Sign does contain one or more of the above mentioned information. Therefore the proposed Ground Sign does conform to the Sign By-law 10-197.
6. According to Section 5.2.2(g)(iii) of the Sign By-law 10-197, "**(g)(iii) may allocate a maximum 50% of the sign face to a readograph or electronic message display provided that no copy displayed on an electronic message display shall be displayed for less than three seconds, during which there shall be no movement or change in colour or intensity of illumination.**" The proposed Ground Sign is allocating 87% of the sign face to an LED display. Therefore the proposed Ground Sign does not conform to the Sign By-law 10-197. Staff would not be in support of the decision to permit a Ground Sign with an LED display that exceeds the provisions that are allowed in the Sign By-law 10-197 especially when the proposed Ground Sign is within such close proximity to the Queen Elizabeth Way.
7. According to Section 5.2.2(g)(v) of the Sign By-law 10-197, "**(g)(v) may advertise a business on the property on which the Ground Sign is displayed, or an activity, product or service available on that property, or a charity's or community organization's activities.**" The proposed Ground Sign is only advertising for their business on the property on which the Ground Sign is displayed. Therefore the proposed Ground Sign does conform to the Sign By-law 10-197.
8. According to Section 5.2.2(h) of the Sign By-law 10-197, "**(h) not within 15.0 m of a traffic signal or traffic control device.**" There is no traffic signal or traffic control device within 15.0 m of the proposed Ground Sign. Therefore the proposed Ground Sign does conform to the Sign By-law 10-197.
9. According to Section 5.2.2(i) of the Sign By-law 10-197, "**(i) not within 1.5 m or a distance equal to 75% of the height of the Ground Sign, whichever is greater, of any property line.**" Based on a height of 8.53 m a setback of 6.40 m from any property line is required. The proposed Ground Sign that fronts onto the South Service Road is shown with a front yard setback of 14.93 m. However, based on measurements taken from City GISNet the total distance from the front property line to the edge of the curb where the proposed Ground Sign is to be installed is only 14.50 m. At this present time it is difficult to determine if the proposed Ground Sign does or does not conform to the Sign By-law 10-197. The applicant will need to provide staff with an accurate site plan showing the correct front yard setbacks."

The Ontario Ministry of Transportation (MTO) has reviewed the Sign Variance Application and note the following:

"The Ministry has received the Sign Variance Application for the above noted file. Please be advised that the subject property is within the Ministry's permit control area and requires the Ministry's Sign Permit. Comments for the variances are as follows:

1. The Ministry policy reads that the Maximum Signing Allowed "1 pylon" is 46m², therefore the Ministry does not support the size of the proposed sign. In this case, the sign face area would be calculated by adding the surface areas of the LED component, and the written components of the sign structure.
2. The Ministry does not have concerns with the proposed height of 8.53m.

The Ministry supports the following conditions noted in the City's Sign Variance Application:

- Third party advertising is not permitted by the proposed sign.
- The existing non-permitted pylon sign at the north-east quadrant shall be removed.

Further Ministry conditions:

- The brightness of the proposed LED sign cannot exceed 5000 nits during the day and 300 nits from dusk to dawn.
- Video and moving images are not permitted.
- The property owner is responsible to conform with other applicable sections of the Corridor's Signing Policy. Further information can be found at: <http://www.mto.gov.on.ca/english/engineering/management/corridor/signs.shtml>

Evaluation:

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.

These four tests are evaluated in the following comments:

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

Due to the location of the lands in relation to the Queen Elizabeth Way (QEW), any proposed Ground Sign would require a variance for the setback to the QEW therefore this would be considered a special circumstance or condition that applies to the land. In addition, the MTO does not have any concerns with the location of the proposed Ground Sign. Staff are supportive of this variance.

There are no special circumstances that contribute to the proposal's inability to meet the maximum height; sign face area and maximum digital display requirements of the By-law.

b) Whether strict application of the provisions of this By-law in the context of the special circumstances applying to the land, building or use, would result in

practical difficulties or unnecessary and unusual hardship for the applicant, inconsistent with the general intent and purpose of this By-law;

Strict application of the By-law would not permit any Ground Sign to be located along the frontage of the lands. Staff are supportive of the proposed location of the Ground Sign with respect to its proximity to the QEW since the alternative would not permit any sign along the frontage of the property. Therefore, unnecessary and unusual hardships or practical difficulties are being eliminated with respect to the location of the proposed Ground Sign.

The applicant has provided some justification regarding the size of the proposed Ground Sign in their application, stating "the electronic message display comes in standard sizes. In order to support the display safely and have its area 50% of the ground sign's area, we have designed the ground sign at the proposed height and width." Staff are of the opinion that this is not adequate justification for the height and sign face increase and percentage of electronic message display. If the electronic message display comes in standard sizes, then the applicant could have used a smaller size and met the requirements of the By-law (see Appendix "D"). Strict application of the By-law would require a reduction in height, sign face size and electronic message display area. At the time of the application being made, this would not have resulted in practical difficulties or unusual hardship for the applicant. However, as the sign has been constructed, this will result in the applicant being required to remove the Ground Sign and erect a new sign that complies with the provisions of the By-law.

Constructing the sign without the required permissions is not considered to be valid justification for an unusual hardship for the applicant, as the situation has been created by the applicant. Therefore, staff does not feel that the proposed variances maintain the general intent and purpose of the By-law.

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

Staff are supportive of the location of the Ground Sign with respect to its proximity to the QEW as the location of the site makes it impossible to comply with this provision of the By-law.

The applicant has already constructed the Ground Sign on the lands without permissions. Notwithstanding, there are no special circumstances that contribute to the proposal's inability to meet the requirements of the By-law.

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 proposed Ground Sign will be the second electronic message display sign along the South Service Road. In 2012, a 100% electronic message display Ground Sign was permitted by Council at 442 Millen Road, approximately 4 kilometres to the west.

Although one electronic display message sign has been permitted by Council, permitting a second electronic message display Ground Sign will further exasperate the situation that the By-law is attempting to control and sets a precedent for the area for

potential future signs altering their existing advertising or a number of new signs being erected with similar proposals.

The proposed sign location does not alter the essential character of the area as multiple businesses and properties surrounding the subject property also have signs located along their frontage.

Other signs located in the area and their descriptions:

- 420 Glover Road (Union Gas Limited), Ground Sign along South Service Road, no Sign Variance needed, Minor Variance required to permit sign to be located in landscape strip (located 1 kilometre to the west);
- 1100 South Service Road (multi-tenant building), landscape entrance features, no Sign Variance needed; and,
- 410 Lewis Road (multi-tenant building), Ground Sign along South Service Road, no Sign Variance needed (constructed prior to the Hamilton Sign By-law) (located 600 metres to the east).

The increase in height, sign face area and electronic message display will alter the essential character of the area since no other Ground Signs in the area have an increased height or sign face area making this sign inconsistent with the area. In addition, the increase in sign face area facilitates a larger electronic message display as the amount of electronic message display is a percentage (maximum 50%) of the sign face area. The original non-electronic message display Ground Sign on the site was constructed without permissions and will be removed. However, the applicant has since erected the electronic message display Ground Sign, also without permissions.

Recommendation:

That Variance 1 of Sign Variance Application SV-17-001, to permit the proposed Ground Sign to be located 54.5 metres from the Queen Elizabeth Way (QEW), whereas Hamilton Sign By-law No. 10-197 requires a 400 metre setback be **approved** as the variance is in keeping with the intent of the Sign By-law and meets the four tests.

However, Variances 2, 3 and 4 to permit an increase in sign face area of 27.6 square metres for a single-faced Ground Sign or 55.2 square metres for a double-faced Ground Sign, whereas Hamilton Sign By-law No. 10-197 permits a maximum sign area of 0.3 square metres for every 1.0 metres of frontage along which the Ground Sign is located, not to exceed a total sign area of 18.0 square metres for a single-faced Ground Sign or 36.0 square metres for a double or multi-faced Ground Sign; to permit an increase in height of 8.53 metres, whereas Hamilton Sign By-law No. 10-197 permits Ground Signs to have a maximum height of 7.5 metres; and, to permit 87% of their sign face to electronic message display, whereas Hamilton Sign By-law No. 10-197 permits a maximum 50% of the sign face area to a readograph or electronic message display provided that no copy displayed on an electronic message display shall be displayed for

less than three second, during which there shall be no movement or change in colour or intensity of illumination, be **denied** for the following reasons:

1. That the requested variances are not in keeping with the intent of Sign By-law No. 10-197; and,
2. That the requested variances do not meet the four tests of Sign By-law No. 0-197.

Approval:

Authorized:



Yvette Rybensky
Senior Project Manager – Suburban
Development Planning, Heritage and Design, Planning Division

Authorized:



Anita Fabac
Manager
Development Planning, Heritage and Design, Planning Division

Authorized:



Steve Robichaud
Director and Chief Planner, Planning Division

Attach. (5)