

**SIGN VARIANCE APPLICATION – SV-16-020**

**ADDRESS:** 442 Millen Road (Stoney Creek)

Owner: Calitor Group Ltd.

Applicant: Calitor Group Ltd. (Attn: Domenic Marini)

Date Application Received: October 13, 2017

**Background:**

The subject lands currently contain twenty-four (24) commercial / industrial units, in three separate buildings, with associated parking, loading and landscaping. The subject lands have been reviewed through Site Plan Application (DA-12-120) to construct the existing building, a Condominium Application (25CDM-200505) to establish tenancy as part of a Plan of Condominium, and a variance to recognize one loading space for the three buildings, as a result of the Plan of Condominium Application.

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 (see Building Construction Section comments below), 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.

**Proposed Variances:**

The applicant is proposing to permit third party advertising on the existing digital Ground Sign and to recognize the existing location and design of the Ground Sign.

The requested variances are as follows:

1. Notwithstanding Section 5.1.1(f) of Hamilton Sign By-law No. 10-197, the existing Ground Sign will be located 34.7 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(g)(i) of Hamilton Sign By-law No. 10-197, the existing Ground Sign will not provide a municipal address displayed at the top or bottom of the sign face in numerals that are a minimum height of 15.0 cm, whereas Hamilton Sign By-law No. 10-197 requires that a Ground Sign include

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.

3. Notwithstanding Section 5.2.2(g)(v) of Hamilton Sign By-law No. 10-197, the existing Ground Sign is proposing to advertise businesses, events and activities that are not provided on the subject lands where the Ground Sign is displayed, whereas Hamilton Sign By-law No. 10-197 permits a Ground Sign to 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.
4. Notwithstanding Section 5.2.2(g)(vi) of Hamilton Sign By-law No. 10-197, the existing Ground Sign is proposing to allocate 100% of their digital display to advertising businesses, events and activities that are not provided on the subject lands where the Ground Sign is displayed, whereas Hamilton Sign By-law No. 10-197 permits a Ground Sign that is not within the Downtown Community Improvement Area, Business Improvement Area, the Ancaster Village Core Area, or the Glanbrook Village Core Area, may allocate a maximum 25% of the sign area or 1.2 m<sup>2</sup>, whichever is lesser, except for an electronic message display, to advertising a business that is not on the property on which the Ground Sign is displayed or an activity, product or service that is not available on that property.
5. Notwithstanding Subsection 5.2.2(e) of Hamilton Sign By-law No. 10-197, the existing ground sign will have a maximum sign area of 25.08 square metres per sign face (50.16 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 the 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.

**Plans/Drawings/Photos Submitted with Application:**

Location Map (Appendix "A")  
Site Plan (Appendix "B")  
Sign Detail (Appendix "C")  
Digital Design (Appendix "D")  
Pictures of Existing Sign Structure and Display/Advertising (Appendix "E")

**Preliminary Staff Assessment:**

Staff are of the opinion that the proposed third party advertising does not meet the four tests as set out in Section 6.5 of By-law No. 10-197 and further analyzed in the Evaluation section below.

Based on site visits, staff has witnessed multiple businesses, events and activities being advertised on the existing Ground Sign (see Appendix "E") prior to the submission of the Sign Variance Application. Advertising has included, but not been limited to, ticket sales for special events, seasonal events, Hamilton / Stoney Creek / Niagara local businesses not located on the subject lands and celebration events not located on the subject lands, all being advertised on the existing Ground Sign. The third party advertising is

proposed on 100% of the existing digital message display, which is double what the By-law permits.

Staff are supportive of the variances recognizing the existing location of the Ground Sign in relation to the proximity to the QEW, the existing sign face area, and can support the variance to not provide the municipal address on the existing Ground Sign, as adequate municipal addressing and signage has been provided through Wall Signs for tenants. However, staff are not supportive of the two variances associated with third party advertising. Further analysis is provided below in the Evaluation section.

### Circulation

The application for the requested variances was circulated on October 31, 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. "This applicant is requesting a variance to Hamilton Sign By-law 10-197 to permit alterations to the existing ground sign. The existing sign is located along the South Service Road street line, which is permitted pursuant to Committee of Adjustment decision SC/A-13:238.
2. Our records indicate the last recognized use is a multi-tenant industrial building.
3. The proposed variance to Hamilton Sign By-law 10-197 creates no zoning concerns.
4. Zoning examination staff does not review the proposed variance for compliance with Hamilton 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.
5. 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 existing Ground Sign is within 34.7 m of the right of way of Highway 403. Therefore the existing Ground Sign does not conform to the Sign By-law 10-197. I would not be in support of the decision to permit a Ground Sign with third-party advertising that exceeds the provisions that are allowed in the Sign By-law 10-197 especially when the existing Ground Sign is

within such close proximity to the Queen Elizabeth Way. Also, the MTO sign permit SG-2011-20T-304 that was issued on May 6, 2013 for the original Ground Sign, clearly states under condition (7) no third party advertising is allowed.

2. According to Section 5.2.2(e) of the Sign By-law 10-197, "**(e) maximum sign area of 0.3 m<sup>2</sup> 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 m<sup>2</sup> for a single-faced Ground Sign or 36.0 m<sup>2</sup> for a double or multi-faced Ground Sign.**" Based on a frontage of 220.94 m the maximum sign area for all Ground Signs that front onto the South Service Road is 18.0 m<sup>2</sup>. The sign area of the existing Ground Sign that fronts onto the South Service Road frontage is 25.08 m<sup>2</sup> or 50.16 m<sup>2</sup> for a double faced Ground Sign which exceeds the 46.43 m<sup>2</sup> that was permitted by the MTO on their sign permit SG-2011-20T-304. Therefore the existing Ground Sign does not conform to the Sign By-law 10-197 or to the MTO permit under condition (5) which states that any changes or additional signage will require further MTO approval and permits prior to their placement. Therefore it is my recommendation that if the owner of the existing Ground Sign wishes to keep the existing sign as currently dimensioned even without the third party advertising that they will need to obtain another sign permit from the MTO with the correct sign area stated on the permit.
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 existing Ground Sign is 9.49 m which exceeds the height of 9.06 m that was permitted by the MTO on their sign permit SG-2011-20T-304. Therefore the existing Ground Sign does not conform to the Sign By-law 10-197 or to the MTO permit under condition (5) which again states that any changes or additional signage will require further MTO approval and permits prior to their placement. Therefore it is my recommendation that if the owner of the existing Ground Sign wishes to keep the existing sign with its current height even without the third party advertising that they will need to obtain another sign permit from the MTO with the correct height stated on the permit.
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.**" Based on google maps, since no drawings were provided, the existing Ground Sign does not appear to have the municipal address of the property shown at the top or bottom in numerals that are a minimum height of 15.0 cm. Therefore, the existing Ground Sign does not 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 existing Ground Sign does contain one or more of the above mentioned information. Therefore, the existing 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.*" A sign variance was already applied for and approval was given for the size of the electronic display to be 100% of the sign face.

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 existing Ground Sign is advertising for more businesses that are not on the property than for businesses that are on the property on which the Ground Sign is displayed. Therefore the existing Ground Sign does not conform to the Sign By-law 10-197. I would not be in support of the decision to permit third party advertising seeing that the owner is currently renting out third party advertising space which is in contrary to the Sign-Bylaw 10-197 and condition (7) as set out on the MTO sign permit SG-2011-20T-304.
8. According to Section 5.2.2.(g)(vi) of the Sign By-law 10-197, "***(g)(vi) for a Ground Sign that is not within the Downtown Community Improvement Area, Business Improvement Area, the Ancaster Village Core Area, or the Glanbrook Village Core Area, may allocate a maximum 25% of the sign area or 1.2 m<sup>2</sup>, whichever is lesser, except for an electronic message display, to advertising a business that is not on the property on which the Ground Sign is displayed or an activity, product or service that is not available on that property.***" The existing Ground Sign is allocating 100% of their sign face to advertising businesses that are not on the property on which the Ground Sign is displayed. Therefore the existing Ground Sign does not conform to the Sign By-law 10-197. Again, I would not be in support of the decision to permit third party advertising seeing the owner's disregard for the Sign-Bylaw 10-197 and for condition (7) as set out on the MTO sign permit SG-2011-20T-304.
9. 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 existing Ground Sign. Therefore the existing Ground Sign does conform to the Sign By-law 10-197.
10. 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 9.5 m a setback of 7.12 m from any property line is required. The existing Ground Sign that fronts onto the South Service Road frontage is setback a distance of only 3.0 m from the front property line. The previous sign variance application addressed the existing setback and recognized the location of the sign. Therefore the existing Ground Sign does conform to the Sign By-law 10-197."

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

"If the applicant is going to the City of Hamilton for a sign variance for his LED signage in Stoney Creek the Ministry is not in support of his application. His Ministry sign permit in Stoney Creek was granted based on the information he provided to the Ministry as part of his submission. If the signage that is out in the field currently does not adhere to his Ministry sign permit then his sign permit is cancelled and voided. As you have noted there is a discrepancy in the height and size of the sign face. The Ministry permits a maximum sign face of 46 square metres, if it is 50 square metres then misrepresented information was provided on the application and the permit is no longer valid.

Under the Ministry Corridor Sign Policy, no 3<sup>rd</sup> party advertising is permitted along a class 1a Highway and in this instance the QEW is considered a class 1a highway. The Ministry will not be amending the sign permit to permit for 3<sup>rd</sup> Party advertising."

<b>Evaluation:</b>
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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;**

The existing Ground Sign location with respect to the setback from the Queen Elizabeth Way (QEW), the sign face area, and not providing the municipal address above or below the sign face area are existing situations. The setback from the QEW was not included in the first sign variance application based on the understanding that this provision was under the MTO's review.

The municipal addressing was not included in the first sign variance application and will require recognition through this application. Furthermore, the sign face area was not accurate in the first sign variance application and will require recognition through this application.

The sign face is 100% digital display message and existing, as approved by Council through the previous Sign Variance application, and adequate municipal advertising is provided on the building for the tenants. Therefore, providing the municipal address on the existing Ground Sign would be unnecessary for the purposes of finding tenants or the location.

There are no special circumstances that contribute to the proposal's inability to only advertise for the businesses, activities, products or services that are located on the subject lands. Therefore, these variances do not meet the test and are not supported by staff.

**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 require the relocation, downsizing of the sign face area, and the requirement to provide the municipal addressing above or below the sign face area. Staff are supportive of recognizing the existing location of the Ground Sign with respect to proximity to the QEW, the existing sign face area, and supportive of recognizing not providing the municipal addressing above or below the sign face area. Therefore, unnecessary and unusual hardships or practical difficulties are being eliminated with respect to three of the required variances.

However, no justification has been provided regarding the third party advertising and the need to display messages for businesses, activities, products or services that are not located on the subject lands. Therefore, these variances do not meet the test and are not supported by staff.

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

Staff are supportive of recognizing the existing location of the Ground Sign with respect to the proximity to the QEW, the existing sign face area, and supportive of recognizing not providing the municipal addressing above or below the sign face area.

Providing the municipal address on the existing Ground Sign would be unnecessary for the purposes of finding tenants or the location due to the amount of tenant Wall Signs located on the building, there are no issues finding the location of the building or the tenants located in it. Therefore, staff support the variances.

The applicant has been displaying third party advertising prior to applying for the Sign Variance and justification for the advertising has not been provided. Accordingly, there are no special circumstances that contribute to the proposal's inability to meet the requirements of the By-law. Therefore, these variances do not meet the test and are not supported by staff.

**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 existing Ground Sign is the only electronic display message sign in this area. In addition, all other Ground Signs advertise the businesses or tenants on the subject lands and do not provide third party advertising.

The following is a summary of the surrounding properties and their signage:

- 324 South Service Road (Wajax Power Products Ltd.) - Ground Sign, no electronic display message (although the business has moved, their Ground Sign shows the new address of which they are located);
- 330 South Service Road (Mack, Stoney Creek) – Ground Sign, no electronic display message, and wall signs;



- 364 – 390 South Service Road, Stoney Creek (multiple commercial/ industrial units) – No ground sign, only wall signs;
- 460 South Service Road, Stoney Creek (Toromont Inc) – Two Ground Signs, no electronic display message; and,
- North Service Road – Residential and Open Space, no advertising signage.

Since the previous approval, there have been multiple residential / sensitive land use developments that have been approved and are either constructed and occupied or partially constructed on the north side of the QEW. The existing Ground Sign with the illumination of the electronic display message emits extensive and harsh lighting, especially at night, and is visible to the residential developments. Therefore, these variances do not meet the test and are not supported by staff.

The existing sign location, existing sign face area, and lack of provision for the municipal addressing on the sign do not alter the essential character of the area as multiple businesses and properties surrounding the subject property have signs located along their frontage with similar massing and heights and the municipal addressing is provided on the building. Likewise, the existing sign location has already been approved and presents no concerns because of its location. Therefore, staff support the variances.

**Recommendation:**

That Variances 1, 2 and 5 of Sign Variance Application SV-16-020, to permit the existing Ground Sign to be located 34.7 metres from the Queen Elizabeth Way (QEW), whereas Hamilton Sign By-law No. 197 requires a 400 metre setback, to recognize that the existing sign does not provide municipal addressing above or below the sign face area, whereas Hamilton Sign By-law No. 197 requires addressing to be provided above or below the sign face area at a minimum height of 15.0 cm and to permit the existing sign face area of 50.14 square metres for a double sided sign, whereas Hamilton Sign By-law No. 10-197 permits a maximum sign face area of 36 square metres for a double sided sign, be **approved** as they are recognizing the existing sign location and sign design, with the following condition:

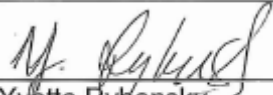
1. That the owner / applicant receive a MTO permit to recognize the existing Ground Sign height, location, digital display and size and to permit the third party advertising.

However, Variances 3 and 4, to permit third party advertising on 100% of the electronic message display, is specifically prohibited by the Hamilton Sign By-law No. 197 which permits signs to 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. Further, the Ground Sign is not within the Downtown Community Improvement Area, Business Improvement Area, the Ancaster Village Core Area, or the Glanbrook Village Core Area where the By-law permits Ground Signs to allocate a maximum 25% of the sign area or 1.2 m<sup>2</sup>, whichever is lesser, except for an electronic message display, to advertising a business that is not on the property on which the Ground Sign is displayed or an activity, product or service that

is not available on that property. On this basis, Variances 3 and 4 are recommended to 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 tests of Sign By-law No. 10-197.

**Approval:**

Authorized:   
Yvette Rypensky  
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)