



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	September 18, 2018
SUBJECT/REPORT NO:	Sign Variance Application SV-17-011 for the property known as 272-274 King Street West, Hamilton, Denied by the Director of Planning and Chief Planner, Planning Division, and Appealed by the Applicant (PED18225) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Joseph Sanseverino (905) 546-2424 Ext. 4672
SUBMITTED BY:	Stephen Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That the Appeal of Sign Variance Application SV-17-011, by **Vincent Formosi (Blackfish Investments Inc). Owner**, to replace the existing non-conforming roof top Billboard Sign with electronic message that advertises service for a third party, for the property located at 272-274 King Street West, (Hamilton), as shown on Appendix “A” to Report PED 18 225, 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-17-011 on July 10, 2017, which proposed to permit and legalize a 5.8 m by 3.1 m Digital Billboard on the roof of an existing building (see Appendices “B” and “C” to Report PED18225) for purposes of third party advertising which was installed without any municipal approvals. A previous static Billboard Sign was located on the roof of the existing building which advertised for Hakim Optical who were the previous tenant of the ground floor of 272-274 King Street West, and subsequently moved out of the building between 2007 and 2009.

SUBJECT: Sign Variance Application SV-17-011 for the property known as 272-274 King Street West, Hamilton, Denied by the Director of Planning and Chief Planner, Planning Division, and Appealed by the Applicant (PED18225) (Ward 2) - Page 2 of 9

The variances to the Sign By-law requested by the applicant are to permit a Digital Billboard for the purposes of third party advertising on the rooftop of the existing building at 272-274 King Street West.

The variances were denied by the Director of Planning and Chief Planner on August 10, 2018. The applicant appealed the decision on August 28, 2018 and requested the proposed Sign Variance Application be considered by the Planning Committee in accordance with the provisions of the Sign By-law.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: The Application is under the *Municipal Act*, and there are no requirements for a Public Meeting. Sign By-law No. 10-197 requires the City Clerk to notify the applicant once a hearing date before the Planning Committee has been fixed where an appeal of the decision of the staff is made by the applicant.

HISTORICAL BACKGROUND

On August 12, 2010, Council approved Sign By-law No. 10-197. Part 6.0 of By-law No. 10-197 provides the regulations in dealing with variances, including the delegated approval authority, what the City of Hamilton shall have regard for when reviewing Sign Variance Applications (section 6.5), and the process of appealing the Sign Variance Application decision (section 6.6) (see Appendix “D” to Report PED18225).

On July, 11 2017, staff received the application for a Sign Variance to allow for a 5.8 m by 3.1 m roof top Digital Billboard for the purposes of third party advertising that was established without a permit. The sign does not conform to the applicable provisions of the Downtown Secondary Plan (DTSP), in particular Policy 6.1.5.18 which states that “New signage geared to fast-moving vehicular traffic such as billboards or permanent portable signs shall not be permitted” and Sign By-law No. 10-197 which implements the DTSP.

SUBJECT: Sign Variance Application SV-17-011 for the property known as 272-274 King Street West, Hamilton, Denied by the Director of Planning and Chief Planner, Planning Division, and Appealed by the Applicant (PED18225) (Ward 2) - Page 3 of 9

The following variances were requested and/or identified during the review of the application:

1. To permit a 5.8 m by 3.1 m Digital Billboard to be located on the roof top of the building;
2. To permit a Digital Billboard for the purposes of third party advertising;
3. To permit a Digital Billboard within a Downtown Community Improvement Project Area;
4. To permit a Digital Billboard to be within 300 m of a property zoned D2 which permits residential dwellings; and,
5. To permit a Digital Billboard to be setback 0 m from the property line.

On August 10, 2018, the variances were denied by the Director of Planning and Chief Planner, and notice was sent to the applicant advising them of the decision. On August 28, 2018, 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 requesting that the proposed Sign Variance appeal be considered by the Planning Committee (see Appendix “E” to Report PED18225).

The applicant, in their letter of appeal, was of the opinion that the variances maintain the intent of the Sign By-law and are compatible with the surrounding land uses and will have no impact on the area (see Appendix “E” to Report PED18225).

Details of Submitted Application

Location:	272-274 King Street West, Hamilton
Owner:	Vincent Formosi (Blackfish Investments Inc.)
Applicant:	Vincent Formosi, (Blackfish Investments Inc.)
Property Description:	<u>Frontage:</u> 10.40 m
	<u>Lot Depth:</u> 16.45 m
	<u>Area:</u> 171.08 sq m

SUBJECT: Sign Variance Application SV-17-011 for the property known as 272-274 King Street West, Hamilton, Denied by the Director of Planning and Chief Planner, Planning Division, and Appealed by the Applicant (PED18225) (Ward 2) - Page 4 of 9

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 of By-law 10-197 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 the property where the sign is displayed and is either single faced or double faced but does not include a Ground Sign”.

While the sign in question is located on the roof and therefore is not free standing. As the sign in question provides advertisement for products and services not sold or offered on the property, the Billboard Sign definition most closely aligns with the proposed sign. Therefore, for the purpose of the Sign Variance, the sign has been interpreted to be a Digital Billboard.

Sign By-law 10-197 defines a “Digital Billboard” as follows: “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 the property where the sign is displayed by means of a digital or electronic screen and is either single faced or double faced but does not include a Billboard or a Ground Sign.”

The proposed Digital Billboard is a roof top sign. Therefore the proposed Digital Billboard does not conform to the Sign By-law 10-197.

The proposed “Digital Billboard” was reviewed against Sign By-law 10-197 and the following deficiencies were identified:

Section 5.10A.2 (i) of the Sign By-law 10-197 restricts the location of a Digital Billboard prohibiting the installation “on a property within the Downtown Community Improvement Project Area, the Waterdown Urban Area or the Waterdown Settlement Area.” The property is located within the Downtown Community Improvement Project Area. Therefore the proposed Digital Billboard does not conform to the Sign By-law 10-197.

Section 5.10A.2 (l) (i) of the Sign By-law 10-197, restricts the location of a Digital Billboard to “not less than 300 m from any residentially zoned property.” This property

SUBJECT: Sign Variance Application SV-17-011 for the property known as 272-274 King Street West, Hamilton, Denied by the Director of Planning and Chief Planner, Planning Division, and Appealed by the Applicant (PED18225) (Ward 2) - Page 5 of 9

itself is zoned Downtown Prime Retail Streets (D2) zone which permits dwelling units. Therefore the proposed Digital Billboard does not conform to the Sign By-law 10-197.

Section 5.10A.2 (m) of the Sign By-law 10-197, restricts the location of a Digital Billboard to “not less than 3.5 m from any property line.” The proposed Digital Billboard extends to the edge of the roof and since the building is right up to the property line then there is no setback to the property line. Therefore the proposed Digital Billboard does not conform to the Sign By-law 10-197.

The static roof top Billboard Sign existed prior to the By-law coming into effect and therefore would constitute an existing sign under Section 3.4. The static roof top Billboard Sign served as a business identification sign for a business which operated on the ground floor of the subject lands and moved out of the building between 2007 and 2009 prior to the enactment of Sign By-law No. 10-197.

The static roof top Billboard Sign was replaced with a Digital Billboard which was done without a permit or variances to the Sign By-law. The replacement of the existing sign with a Digital Billboard constitutes a substantial alteration and increases the non-compliance of the Billboard Sign.

Furthermore, the advertising for third party businesses and services of which are not located within the subject lands is not permitted by By-law 10-197.

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

The subject property is zoned “D2” Downtown Prime Retail Streets in the City of Hamilton Zoning By-law No. 05-200, which permits a range of commercial uses.

City of Hamilton Zoning By-law No. 05-200 as amended by By-law 18-114

The subject property is zoned Downtown Mixed Use Pedestrian Focus (D2, H21) in the City of Hamilton Zoning By-law No. 05-200, which permits a range of commercial uses however is currently under appeal before the Local Planning Tribunal (LPAT) and is subject to Holding provision (H-21).

As the Digital Billboard is not located in any required parking, landscaped strip, manoeuvring space, loading space, planting strip, or access driveway the proposed Sign conforms to the City of Hamilton Zoning By-law No. 05-200. The Zoning By-law defers to the Sign By-law to regulate the size, type and location of signs.

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 Service Division outlined that the proposed sign did not conform to a total of five provisions of the By-law as outlined in the Policy Implications and Legislated Requirements Section of this Report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The variances seek to establish a roof top Digital Billboard for the purposes of third party advertising which is explicitly prohibited in the Sign By-law. Further the variances seek to maintain a Digital Billboard within 30 m of the King Street West and Hess Street North intersection and within 300 m of a residential district. Additional matters of compliance to the Sign By-law were not able to be determined as insufficient information was provided within the plans to address light impact and message duration and transition timing for the digital messages displayed within the Billboard Sign. The variances to legalize the roof top Digital Billboard for the purposes of third party advertising are to legalize a form of signage and advertising that is not permitted, and therefore the variances do not maintain the general intent and purpose of the Sign By-law.

On August 12, 2010, Council approved Sign By-law No. 10-197. Part 6.0 of By-law No. 10-197 provides the regulations in dealing with variances, pursuant to section 6.5 of the City of Hamilton Sign By-law No.10-197, 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

SUBJECT: Sign Variance Application SV-17-011 for the property known as 272-274 King Street West, Hamilton, Denied by the Director of Planning and Chief Planner, Planning Division, and Appealed by the Applicant (PED18225) (Ward 2) - Page 7 of 9

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 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” to Report PED18225).

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 Billboard Sign existed on the property prior to the sign being replaced with a digital rooftop third party Billboard Sign. The previous rooftop Billboard Sign was used as business identification sign for the tenant on the ground floor of the building. 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 a business decision of the property owner. 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 Billboard Sign with digital display for the purpose of increasing the number of third party advertisements the sign can display. It is intended that signs that existed prior to the Sign By-law, which would now be prohibited, will with time 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 King Street West. Therefore, strict application of the By-law would not create practical difficulties, nor would it create

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SUBJECT: Sign Variance Application SV-17-011 for the property known as 272-274 King Street West, Hamilton, Denied by the Director of Planning and Chief Planner, Planning Division, and Appealed by the Applicant (PED18225) (Ward 2) - Page 8 of 9

unnecessary or unusual hardship, and would protect the safety of motorists and pedestrians along King Street West.

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

Variances to By-law 10-197 are required because the applicant wishes to legalize a Billboard Sign that was replaced illegally by the sign owner from a static Billboard Sign used for business identification purposes for the previous tenant on the ground floor to a Digital Billboard Sign. The replacement of the sign to a Digital Billboard 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 with digital message is on a rooftop along a major arterial road that leads into one of the City's busiest entertainment districts and is also located within Downtown Community Improvement Project Area. Rooftop Signs are not in keeping with the character of the area and legalizing the replacement of the Billboard Sign which was used for business identification purposes of the previous tenant located on the ground floor of the building 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 Billboard has the potential to cause a visual distraction for motorists driving along King Street West which impacts the safety of motorists and pedestrians in the area. Therefore, the Digital Billboard that is subject to the variances will alter the essential character of the area.

The Sign Variance Application was denied by the Director of Planning and Chief Planner, Planning Division, on August 10, 2018. 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" to Report PED18225).

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

SUBJECT: Sign Variance Application SV-17-011 for the property known as 272-274 King Street West, Hamilton, Denied by the Director of Planning and Chief Planner, Planning Division, and Appealed by the Applicant (PED18225) (Ward 2) - Page 9 of 9

intent and purpose of the Sign By-law. The applicant would not be able to legalize the Digital Billboard and would be required to remove the Digital Billboard that was established illegally. The applicant would still be permitted to establish a 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 staff's opinion that this option does not maintain the general intent and purpose of the Sign By-law.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

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