



Hamilton

**STAFF COMMENTS**

**HEARING DATE: April 23, 2024**

**HM/A-24:41 – 195 Rebecca Street, Hamilton**

Recommendation:

Denial

Proposed Conditions:

Proposed Notes:



Hamilton

Development Planning:

**Background**

To facilitate the construction of an outdoor seasonal patio attached to an existing two storey mixed use building.

**Analysis**

**Urban Hamilton Official Plan**

The subject lands are designated as “Downtown Mixed Use Area” in Schedule E-1 – Urban Land Use Designations and are identified as “Downtown Urban Growth Centre” in Schedule E – Urban Structure of the Urban Hamilton Official Plan. Policy E.4.4.1, amongst others, is applicable and permits the commercial use. The subject lands are located within the Downtown Hamilton Secondary Plan and are also subject to the policies of the Secondary Plan.

**Downtown Hamilton Secondary Plan**

The subject lands are designated “Downtown Residential” in Land Use Plan - Map B.6.1 – 1 of the Downtown Hamilton Secondary Plan. Policies 6.1.4.6, and 6.1.5.1, amongst others, are applicable and permit the existing residential and commercial uses.

Policy 6.1.4.6 a) requires that applications for development be evaluated regarding compatibility with adjacent land uses in terms of potential impacts arising from shadowing, grading, overlook, noise, lighting, traffic and other impacts. Staff have concerns regarding compatibility with neighbouring residential uses arising from noise generated by the proposed outdoor commercial patio.

Policy 6.1.5.1 b) i) speaks to the permitted local commercial uses within the “Downtown Residential” designation, which includes restaurants amongst other commercial uses. However, Policy 6.1.5.1 b) ii) specifically prohibits outdoor commercial patios, in addition to drive-through facilities and gas stations.

Based upon these policies, Staff are of the opinion that the proposed outdoor commercial patio does not maintain the intent of the Urban Hamilton Official Plan nor Downtown Hamilton Secondary Plan.

**Archaeology**

No comment.

**Cultural Heritage**

No comment.



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

The subject lands are zoned Downtown Residential (D5, H17, H19, H20) Zone under City of Hamilton Zoning By-law No. 05-200. The existing residential and commercial uses are permitted.

**Variance 1**

1. An outdoor patio shall be permitted on a lot where any lot line abuts a Downtown (D5) Zone or where such lot is separated from a Downtown (D5) Zone by a laneway, instead of the regulation that no outdoor patios shall be permitted in a lot where any lot line abuts a Residential Zone, Downtown (D5) or Downtown (D6) Zone or where such lot is separated from a Residential Zone, Downtown (D5) or Downtown (D6) Zone by a laneway.

The intent of this provision is to avoid negative impacts arising from land use compatibility issues between commercial uses and neighbouring residential uses, such as noise and odour.

Staff note that Zoning By-law No. 05-200 General Provisions, Section 4.20 c) i) provides the location requirements for outdoor commercial patios, stating the following:

*“Except as provided in Subsection b) (ii) below, no outdoor patio shall be permitted on a lot where any lot line abuts a Residential Zone, Downtown D5 or Downtown D6 Zone or where such lot is separated from a Residential Zone, Downtown D5 or Downtown D6 Zone by a laneway;”*

Staff further note that Zoning By-law Section 6.5.2, Prohibited Uses of the Downtown Residential (D5) Zone, specifically prohibits outdoor commercial patios, even as an accessory use. Staff are of the opinion that the proposed outdoor commercial patio may negatively impact neighbouring residential uses, as it has the potential to create noise and nuisance issues.

Therefore, the requested variance does not meet the intent of the Urban Hamilton Official Plan and Hamilton Zoning By-law No. 05-200, it is not minor in nature and is not desirable for the appropriate development or use of the land. Staff do not support the variance.

Staff are of the opinion that the variance meet the four tests of a minor variance. Based on the foregoing, **staff recommend denial.**



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Zoning:

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	<ol style="list-style-type: none"> <li>1. Insufficient information was provided regarding proposed use/seating capacity for the proposed outdoor patio. Additional variances may be required if compliance with the Hamilton Zoning By-law 05-200 cannot be achieved.</li> <li>2. The proposed Outdoor Patio is located on the neighboring property (199 Rebecca Street). Staff is unable to determine lot ownership at this time. For Consolidated lot development as per the By-law, <p style="margin-left: 40px;"><i>Where two or more abutting lots under one identical ownership are consolidated for the purpose of development, the internal lot lines of the original lots shall not be construed to be lot lines for the purposes of any zoning regulations provided that all applicable regulations of this By-law relative to the consolidated lot development and its external lot lines are complied with.</i></p> </li> <li>3. Please be advised If the Outdoor Patio is intended to be enclosed additional variances may be required.</li> <li>4. Please note that these lands may be: <ul style="list-style-type: none"> <li>- Regulated by a Conservation Authority;</li> <li>- Located within or adjacent to an Environmentally Sensitive Area (ESA);</li> <li>- Designated under the Ontario Heritage Act;</li> <li>- Listed in the City of Hamilton’s Inventory of Buildings of Architectural and/or Historical Interest; and/or,</li> <li>- Included in the City of Hamilton’s Register of Property of Cultural Heritage Value or Interest.</li> </ul> <p style="margin-left: 40px;"><i>Staff cannot confirm this information at this time and the applicant should make the appropriate inquiries in order to determine what other regulations may be applicable to the subject property</i></p> </li> </ol>
Proposed Notes:	

Development Engineering:



# Hamilton

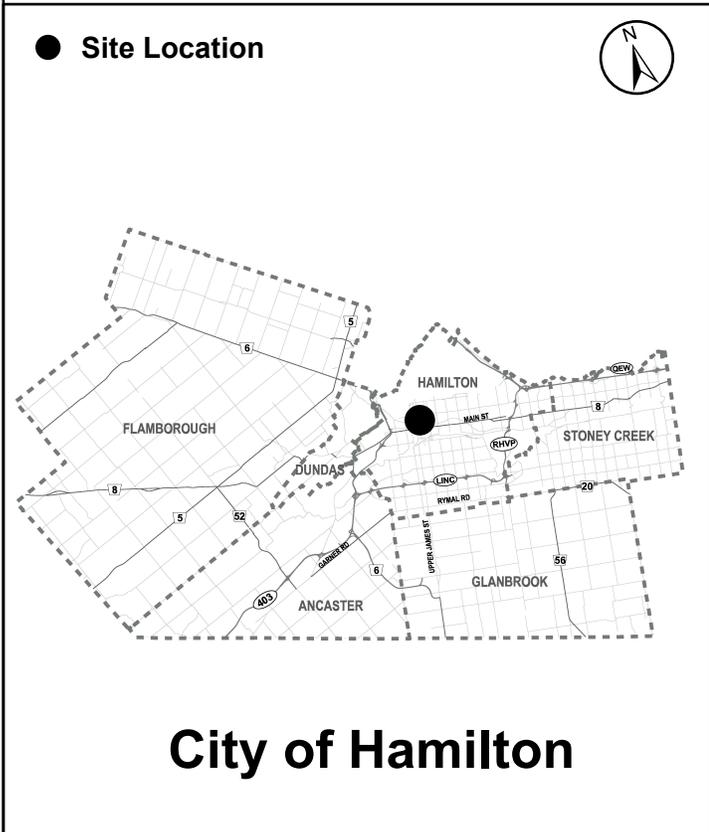
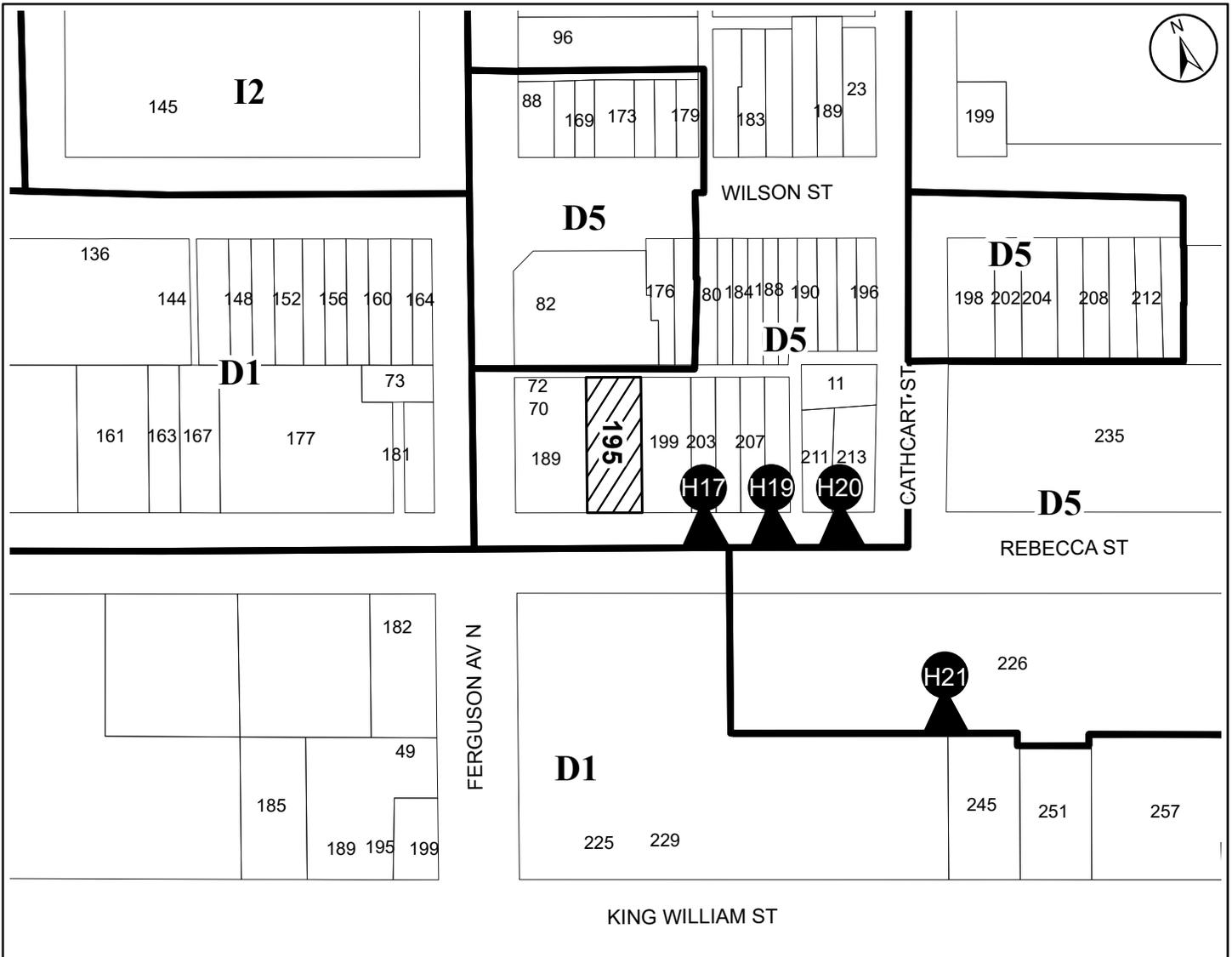
Recommendation:	No comments.
Proposed Conditions:	
Comments:	
Proposed Notes:	

**Building Engineering:**

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	
Proposed Notes:	<p>A building permit is required for the construction of the proposed outdoor seasonal patio attached to an existing two(2) storey mixed use building.</p> <p>Be advised that Ontario Building Code regulations may require specific setback and construction types.</p>

**Transportation Planning:**

Recommendation:	No comments
Proposed Conditions:	
Comments:	
Proposed Notes:	



## Committee of Adjustments

<b>Subject Property</b>	File Name/Number: HM/A-24:41
195 Rebecca Street, Hamilton (Ward 2)	Date: April 11, 2024
	Technician: AL
	Scale: N.T.S.
	Appendix "A"
Planning and Economic Development Department	<b>Hamilton</b>