

**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b> Chair and Members Planning Committee	<b>WARD(S) AFFECTED:</b> WARD 6
<b>COMMITTEE DATE:</b> April 16, 2013	
<b>SUBJECT/REPORT NO:</b> Sign Variance Application SV-12-009 for the Property Known as 1188 Rymal Road East (Hamilton), Denied by the Director, Planning Division, and Appealed by the Applicant (PED13065) (Ward 6)	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Danielle Stevens (905) 546-2424 Ext. 1285
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the Appeal of Sign Variance Application SV-12-009, by Paletta International, to construct a ground sign to be located 35m from another ground sign displayed along the same frontage, for the property located at 1188 Rymal Road East (Hamilton), as shown on Appendix "A" to Report PED13065, be **DENIED** on the following basis:

- (a) That the requested variance is not in keeping with the intent of Sign By-law No. 10-197;
- (b) That the requested variance does not meet the tests, as set out in Section 6.5 of Sign By-law No. 10-197.
- (c) That the proposed ground sign could be located to an alternative location(s) in compliance with the requirements of Sign By-law No. 10-197; and,

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- (d) That approval of the appeal could encourage other similar applications which, if approved, would undermine the proposed intent of Sign By-law No. 10-197.

**EXECUTIVE SUMMARY**

The applicant submitted Sign Variance Application SV-12-009 to construct a new ground sign to be located east of the existing entrance on Rymal Road East, on the property located at the southwest corner of Rymal Road East and Nebo Road. The proposed ground sign would be located 35m from an existing ground sign (Tim Horton's), whereas Hamilton Sign By-law No.10-197, Section 5.2.2(k), requires a minimum distance separation of 200m from another ground sign along the same frontage of the lot (see Appendix "B" - Section 5.2.2(k)).

The Sign Variance Application was denied by the Director, Planning Division, on January 21, 2013. The reasons for refusal were that the proposed variance did not maintain the general intent and purpose of the Sign By-law, and did not meet the 4 tests for sign variances provided in Section 6.5. of By-law 10-197 (see Appendix "C").

Pursuant to Section 6.6 of the Sign By-law, the applicant has appealed the decision of the Director, Planning Division, and has requested that the variance application be brought to the Planning Committee for their consideration (see Appendix "D").

*Alternatives for Consideration - See Page 7.*

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:** None.

**Staffing:** None.

**Legal:** The application is under the Municipal Act, and there are no requirements for a Public Meeting. By-law No. 10-197 requires the City Clerk to notify the applicant once a hearing date before the Planning Committee has been fixed.

## **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 variance applications, and the process of appealing the variance application decision (see Appendix "C").

Ground Signs are regulated under Section 5.2 of Sign By-law No. 10-197. A Ground Sign is defined 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 but does not include a Billboard" (see Appendix "B").

Section 6.3 of By-law No. 10-197 authorizes the Director of Development and Real Estate, now the Director of Planning, or his designate, to approve variances to the Sign By-law. Pursuant to Section 6.6 of By-law No. 10-197, an applicant may appeal the variance application decision of the Director of Planning to the Planning Committee. In this regard, Section 6.8 of By-law No. 10-197 states that "Council may uphold or vary the recommendations of the Planning and Economic Development Committee, or do any act or make any decision that it might have done had it conducted the hearing itself, and the applicant shall not be entitled to a further hearing on the matter before Council, and the decision of Council shall be final."

On October 26, 2012, staff received an application for a sign variance to construct a new ground sign, advertising for Lococo's Grocery and a multi-tenant commercial plaza, to be located east of the existing entrance on Rymal Road East, 35m from the existing Tim Horton's sign. Hamilton Sign By-law No. 10-197 requires a minimum distance of 200m between ground signs located on the same frontage.

On January 21, 2013, the proposed sign variance application was denied by the Director, Planning Division, and notice sent to the applicant advising them of the decision. In addition, the applicant was advised that the decision was based on the understanding that there is no existing ground sign on the Nebo Road frontage, and that the proposed ground sign could be relocated there, subject to compliance with the applicable requirements of Hamilton Sign By-law No. 10-197 and Hamilton Zoning By-law No. 6593.

On February 6, 2013, the applicant sent an e-mail to Vanessa Robicheau, Office of the City Clerk, appealing the decision of the Director, Planning Division, requesting that the proposed sign variance application be considered by the Planning Committee (see Appendix "D").

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**DETAILS OF SUBMITTED APPLICATION:**

**Location:** 1188 Rymal Road East (Hamilton)  
**Owner:** Paletta International Corporation  
**Applicant:** Jones Neon Signs  
**Property Description:** Frontage: 97.8m (approximately)  
Lot Depth: 195.5m (irregular) (approximately)  
Area: 19,127.7 sq. m. (approximately)

**POLICY IMPLICATIONS/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 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 "B"). The proposed Ground Sign is located 35m from an existing Ground Sign along the same frontage, whereas a minimum of 200m is required between two Ground Signs along the same frontage.

**RELEVANT CONSULTATION**

Department/ Agencies having no comments or concerns:

- Geomatics and Corridor Management Section, Engineering Services Division.
- Building Construction Section, Building Services Division.
- Development Engineering Section, Growth Management Division.

**Building Services Division (Zoning Section):**

1. This application is for a variance to City of Hamilton Sign By-law 10-197. Specifically, the applicant is proposing to construct a 7.4m tall ground sign for the newly constructed Lococo's (DA-11-050). The sign will be located 35m from an existing ground sign, whereas the By-law requires a minimum 200m separation distance.

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2. Based on the sign drawings provided with this application, it appears that the proposed ground sign is not located within the required 5.0m landscape area (as per Committee of Adjustment Decision HM/A-12:216), although the exact setback dimension of the proposed sign has not been provided. The proposed ground sign is not located in a required parking space, aisle width manoeuvring space, daylight hypotenuse, landscape area, or loading area. As such, this Division has no concerns with the sign location respecting Zoning By-law regulations.
3. A sign permit is required in the normal manner for renovations to the existing sign.
4. All signs must comply with the regulations contained within Sign By-law 10-197. It is recommended that Plans Examination staff within the Building Services Division be circulated to provide comment respecting compliance of the proposed sign alterations with respect to this By-law.
5. The designer shall ensure that the fire access route conforms to the Ontario Building Code.

<b>ANALYSIS / RATIONALE FOR RECOMMENDATION</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 (see Appendix "B").

The subject property is located at the southwest corner of the Rymal Road East and Nebo Road, and has a frontage along Rymal Road East of 97.84m and frontage along Nebo Road of approximately 150m. Therefore, the sign separation cannot be achieved on the Rymal Road East frontage. There are no ground signs, either existing or proposed, along the Nebo Road frontage. In this regard, the sign can be legally constructed along Nebo Road without requiring a sign variance for distance separation, as it would be located on a different frontage. The applicant's justification for the required variance is that the proposed Ground Sign will have no visibility from the Rymal Road East vehicle traffic if it is located on Nebo Road.

Pursuant to Section 6.5 of the City of Hamilton Sign By-law, 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;**

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- **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;**
- **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.**

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 97.84m frontage along Rymal Road East precludes the proposed second ground sign from meeting the minimum 200m separation. The existing Tim Horton's sign is located towards the northeast corner of the property, and is designed as one of the original sign facades constructed for the business. Tim Horton's has advised an amendment to the existing Tim Horton's sign would alter the intent of the original design, and they are not willing to amend their sign to facilitate a multi-business identification sign similar to other commercial plazas. Staff is of the opinion that there are no special circumstances or conditions that apply, as the sign could be located on Nebo Road, which would not require a sign variance for distance separation since it would be on a different frontage.

**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 proposed sign to be located on Nebo Road, which would not require a sign variance for separation distance. Therefore, no unnecessary or unusual hardships would result.

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

There are no special circumstances or conditions that preclude locating the proposed ground sign in accordance with 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.**

There are many signs located along Rymal Road East. An additional ground sign would not substantially alter the essential character of the area, depending on where the proposed ground sign is located. A 35m separation distance is not sufficient and promotes clustering and over signage.

Based on the foregoing, the requested variance does not maintain the general intent and purpose of the Sign By-law, and does not have regard for the four tests, as set out in Section 6.5 of By-law No. 10-197. Approval of the appeal could encourage other similar applications which, if approved, would undermine the purpose and intent of the Sign By-law.

**ALTERNATIVES FOR CONSIDERATION**

**Option 1:**

Council may uphold the recommendation of the Director, Planning Division, to refuse the proposed variance, as it does not maintain the general intent and purpose of the By-law.

**Option 2:**

Council may vary the recommendation of the Director, Planning Division, to approve the proposed variance, subject to a restriction on the size of the sign and/or any other conditions or restrictions.

**Option 3:**

Council may deny the recommendation of the Director, Planning Division, and support the proposed variance, as submitted.

**ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:**

**Strategic Priority #1**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

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**Strategic Objective**

- 1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.
- 1.5 Support the development and implementation of neighbourhood and City-Wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

**APPENDICES / SCHEDULES**

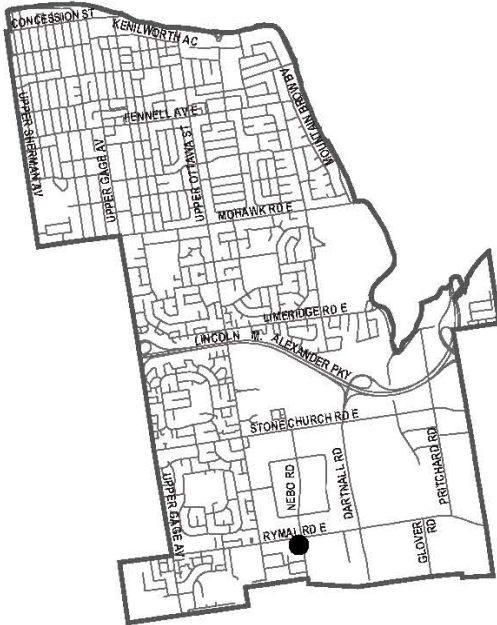
- Appendix “A”: Location Map
- Appendix “B”: Definitions and Section 5.1 and 5.2 of Sign By-law No. 10-197
- Appendix “C”: Section 6.0 of Sign By-law No. 10-197
- Appendix “D”: Appeal Letter
- Appendix “E”: Site Plan
- Appendix “F”: Elevations for Proposed Sign

:DMS  
Attachs. (6)





● Site of the Application



Ward 6 Key Map

N.T.S.

## Location Map



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:  
SV-12-009

Date:  
November 19, 2012

Appendix "A"

Scale:  
N.T.S.

Planner/Technician:  
DS/AL

### Subject Property



1188 Rymal Road East

## **Sign and Other Advertising Devices By-law 10-197**

### **1.1 DEFINITIONS**

"Ground Sign" means 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 but does not include a Billboard;

### **5.1 PROHIBITED SIGNS**

5.1.1 No person shall display or permit to be displayed:

- a) Any sign with a video screen or flashing, kinetic, or illusionary motion except an electronic message display, as permitted under this By-law;
- b) Any sign supported entirely or partly by the roof of a building or structure and which projects above the roof;
- c) Any sign displayed within a visibility triangle;
- d) Any sign displayed on a vehicle, trailer, or truck which is parked or located on property in a manner that is unrelated to its normal use as a vehicle and is more consistent with the use of the vehicle as a sign;
- e) Any sign which obstructs or is displayed in a parking space required under the City's Zoning By-law; or,
- f) Any sign within 400m of the right-of-way of Highway 403, the Queen Elizabeth Way, the Lincoln M. Alexander Parkway, or the Red Hill Valley Parkway."

5.1.2 Where a sign is not expressly permitted by this By-law, it shall be deemed to be prohibited.

5.1.3 Where a type of a sign is not specifically permitted within a particular zone or on a property with a particular zoned use, it shall be deemed to be prohibited within that zone or on that property.

5.1.4 Notwithstanding Sub-sections 5.1.2 and 5.1.3, and subject to the approval of Council, signs on street furniture displayed pursuant to an agreement with the City are permitted.

## **5.2 GROUND SIGNS INCLUDING CONSTRUCTION INFORMATION GROUND SIGNS**

5.2.1 No person shall display or permit to be displayed a Ground Sign except in accordance with the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.

5.2.2 No Ground Sign shall be displayed except in accordance with the following regulations:

### **Permit / Timing**

- (a) Obtain a permit under this By-law;
- (b) For a Construction Information Ground Sign, displayed after any applicable approval for the construction or development project under the Planning Act has been given;
- (c) For a Construction Information Ground Sign, maximum display period of not more than 28 days after construction or development is completed;

### **Structure**

- (d) Embedded in a foundation in the ground to a depth of at least 1.2 m, or secured in an alternative manner that is satisfactory to the Chief Building Official;
- (e) Maximum sign area of 0.3m<sup>2</sup> for every 1.0m of the frontage along which the Ground Sign is located, not to exceed a total sign area of 18.0m<sup>2</sup> for a single-faced Ground Sign or 36.0m<sup>2</sup> for a double or multi-faced Ground Sign;
- (f) Maximum height of 7.5m;

### **Content**

- (g) For a Ground Sign, except a Construction Information Ground Sign:
  - (i) Includes the municipal address number 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;

- (ii) Includes one or more of the following in 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;
- (iii) And except a Ground Sign displayed on a property used for an institutional use, 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;
- (iv) Displayed on a property used for an institutional use, may allocate a maximum 75% 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;
- (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;
- (vi) For a Ground Sign that is not within the Downtown Community Improvement Project Area, a Business Improvement Area, the Ancaster Village Core Area, or within the Glanbrook Village Core Area, may allocate a maximum 25% of the sign area or 1.2m<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;
- (vii) For a Ground Sign that is within the Downtown Community Improvement Project Area, a Business Improvement Area, the Ancaster Village Core Area, or within the Glanbrook Village Core Area not 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;

## Location

- (h) Not within 15.0m of a traffic signal or traffic control device;
- (i) Not within 1.5m or a distance equal to 75% of the height of the Ground Sign, whichever is greater, of any property line;
- (j) Along the same frontage used to calculate the maximum sign area;
- (k) Where more than 1 Ground Sign is displayed along a frontage, not displayed within 200m of another Ground Sign along the same frontage;
- (l) Notwithstanding (k), 1 Ground Sign which provides courtesy or directional information only, such as a menu board or clearance sign, is permitted;
- m) For a Construction Information Ground Sign, on vacant property in residential and commercial zones;
- (n) For a Construction Information Ground Sign, maximum of 2 for any single development or construction project;
- (o) For a Ground Sign, except a Construction Information Ground Sign, permitted in all zones, except where the use of the property is for one or more of the following uses:
  - (i) A Single Detached Dwelling;
  - (ii) A Semi Detached Dwelling;
  - (iii) A Duplex;
  - (iv) A Triplex;
  - (v) A Fourplex or Quadruplex;
  - (vi) A Street Townhouse;
  - (vii) A Mobile Home;
  - (viii) A Residential Care Facility for 6 or less residents;
  - (ix) A Lodging House for 6 or less lodgers;
  - (x) A Retirement Home for 6 or less residents; or,
  - (xi) An Emergency Shelter for 6 or less residents.

5.2.3 No person shall display a Ground Sign on a property that ceases to be vacant or undeveloped and where any Billboard displayed on the property has not been removed.

## **Sign and Other Advertising Devices By-law 10-197**

### **6.0 VARIANCES**

- 6.1 Any Person may apply for a variance from this By-law or any provision thereof.
- 6.2 An application for variance shall be made on the form prescribed by the City of Hamilton, and shall be accompanied by the applicable fee, as set out in Schedule "A".
- 6.3 Variances may be authorized by the Director of Development and Real Estate or his designate.
- 6.4 The City of Hamilton may authorize a variance if, in its opinion, the general intent and purpose of the By-law are maintained.
- 6.5 In considering an application for a variance, the City of Hamilton shall have regard for:
- (a) Special circumstances or conditions applying to the land, building, or use referred to in the application;
  - (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;
  - (c) Whether such special circumstances or conditions are pre-existing and not created by the Sign Owner or applicant; and,
  - (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.
- 6.6 An applicant may appeal the variance application decision of the Director of Development and Real Estate to the Planning and Economic Development Committee.
- 6.7 The City Clerk shall notify the applicant once a hearing date before the Planning and Economic Development Committee has been fixed, and if the applicant does not attend at the appointed time and place, the Committee may proceed in the absence of the applicant and the applicant shall not be entitled to further notice in the proceeding.
- 6.8 Council may uphold or vary the recommendations of the Planning and Economic Development Committee, or do any act or make any decision that it might have done had it conducted the hearing itself, and the applicant shall not be entitled to a further hearing on the matter before Council, and the decision of Council shall be final.



**PALETTA INTERNATIONAL  
CORPORATION**

Delivered by Fax (905) 546-2095

February 5, 2013

City of Hamilton  
Corporate Services Department  
Office of the City Clerk  
71 Main Street West, 1<sup>st</sup> Floor  
Hamilton, Ontario L8P 4Y5

Attention: Vanessa Robicheau

**RE: Sign Variance Application SV-12-009**  
**1188 Rymal Road East, Hamilton**

With respect to the above noted application, it has come to our attention that the variance has been denied, as noted in a letter dated January 21, 2013, signed by the Director of Planning.

Please be advised that Paletta International Corporation wishes to appeal the decision and hereby request this variance be considered and approved by the Planning Committee at its next available meeting.

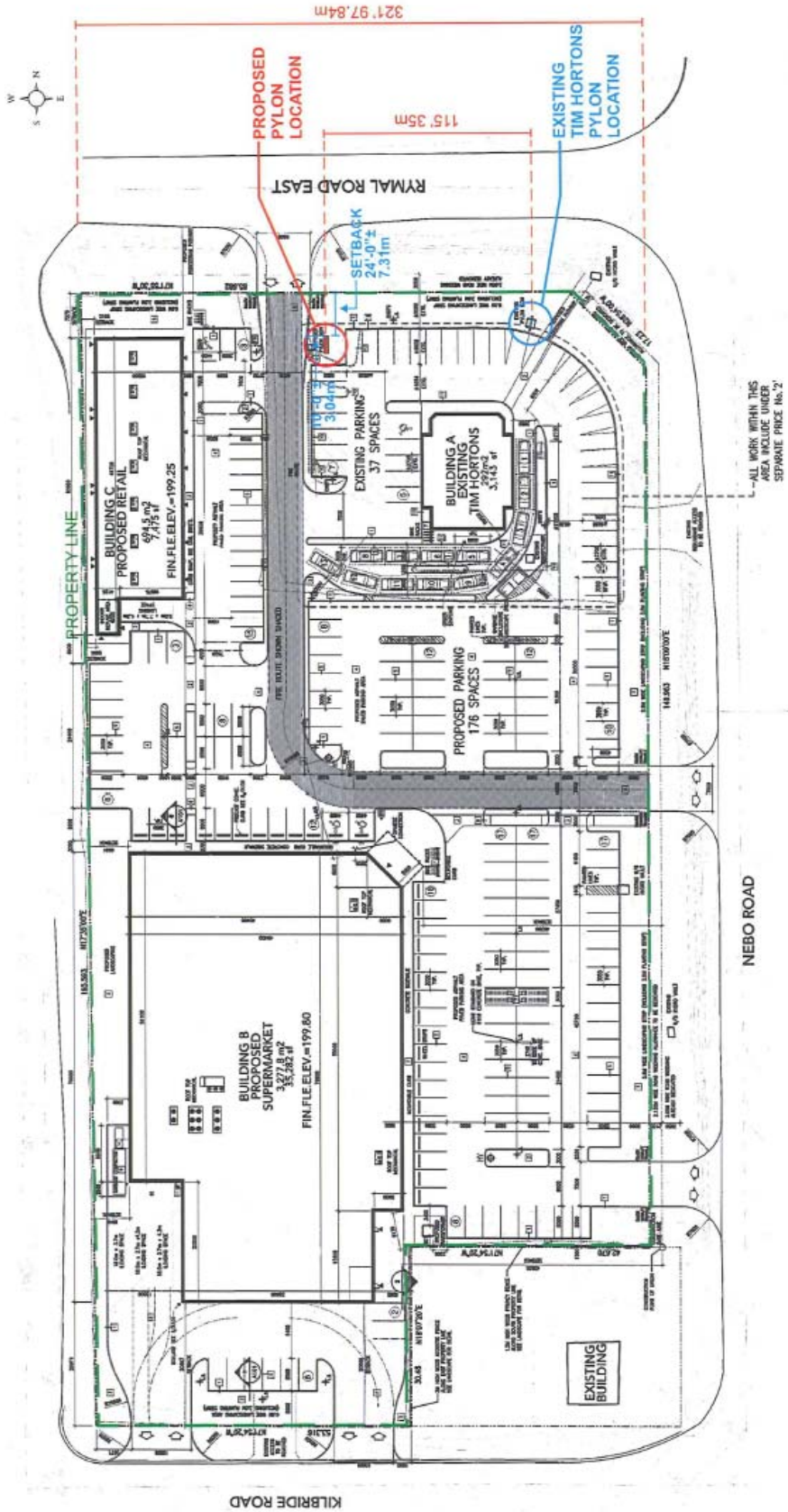
Thank you in advance for your immediate attention to this matter.

Regards;  
PALETTA INTERNATIONAL CORPORATION



Richard Lewis  
Development Coordinator

Cc: Councillor Jackson, Ward 6  
Tim Horton's  
A. Lococo Wholesale Ltd.



\*MIN SETBACK FROM PROPERTY LINE IS 5.625m

1140 Blair Rd.  
Burlington, ON  
L7M 1K9  
Phone: (905) 335-6664  
Fax: (905) 335-2712  
E-mail: info@jonesneonsigns.com  
Website: www.jonesneonsigns.com

**JONES**  
neon displays  
*the LED specialists*

Sales: Dan Bovair  
Date: July 3 /12  
Revision: Aug. 15 /12...Oct. 24 /12  
Scale:  
File Name: Paletta International Corp Hamilton Pylon F-Revit

Customer: Paletta International Corp  
Address: 1188 Rymal Rd., E.  
Hamilton, ON  
Designer: SV  
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