

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Development and Real Estate Division

Report to: Chair and Members Planning & Economic Development Committee	Submitted by: Lee Ann Coveyduck General Manager Planning and Economic Development Department
Date: May 19, 2006 File: HM/A-06:35	Prepared by: Joe Gravina (905) 546-2424, Ext. 1284

SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-06:35, for Property Known as 1400 Upper James Street, City of Hamilton - Supported by the Planning and Economic Development Department (PED06168) (Ward 8)

RECOMMENDATION:

That Report PED06168, respecting Committee of Adjustment Application (Urban) Minor Variance Application HM/A-06:35, 1400 Upper James Street, City of Hamilton, as shown on Appendix 'A' to Report PED06168, denied by the Committee but supported by the Planning and Economic Development Department, be received for information.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

A minor variance application to permit a proposed outdoor patio to be located on the southerly side of the newly constructed restaurant at 1400 Upper James Street abutting a residentially zoned lot was considered before the Committee of Adjustment (Urban) on March 15, 2006. Comments to the Committee from staff supported the requested variance on the basis of distance separation, adequate screening, buffering by a commercial parking area, and Official Plan policies which designate the corridor along Upper James Street for commercial use.

SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-06:35, for Property Known as 1400 Upper James Street, City of Hamilton - Supported by the Planning and Economic Development Department (PED06168) (Ward 8) - Page 2 of 7

The Committee's decision to deny the application (Appendix "C") was appealed to the Ontario Municipal Board by the applicant. An Ontario Municipal Board Hearing has been tentatively scheduled for June 28, 2006.

BACKGROUND:

Roles and Responsibilities of the Committee of Adjustment (PD02116(a))

In December 2002, City Council endorsed a staff report related to the roles and responsibilities of the Committee of Adjustment. The recommendations included the following:

"That the Planning and Development Department be authorized and directed to prepare an Information Report to the Committee of the Whole whenever an appeal is made to the Ontario Municipal Board of a decision made by the Committee of Adjustment to deny an application(s) that was supported by staff. In response to such a report, Council may determine its position on the Committee of Adjustment decision and may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee's decision, and to retain outside professional(s) accordingly."

Proposal

Minor Variance application HM/A-06:35 was submitted to permit a proposed outdoor patio for the newly constructed restaurant (Appendices "B" & "B1") to be located on the subject property (Appendix "A"), which abuts a residentially zoned lot. Hamilton By-law No. 6593 prohibits outdoor patios from locating on properties that abut residentially zoned lands. The abutting lot at 1452 Upper James Street is Zoned "C" (Urban Protected Residential, etc.) and "AA" (Agricultural) District, which both permit residential use.

ANALYSIS/RATIONALE:

The proposed outdoor patio (Appendices "B" & "B1") would be located approximately 90 metres from an existing dwelling located on the abutting residential property to the south currently zoned 'C' (Urban Protected Residential, etc.) District and "AA" (Agricultural) District) and known municipally as 1452 Upper James Street (Appendix "A"). The proposed patio will be further screened and separated from this residential property by a row of mature trees within a proposed 3 metre wide landscaped strip, and separated by an 18 metre wide parking area. The applicant indicates that no outdoor music will be provided on the patio. The subject lands also abut other residentially zoned lands to the west (vacant) and north (Barton Stone United Church); however, in staff's opinion, the location and orientation of the proposed patio will not negatively impact these areas.

SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-06:35, for Property Known as 1400 Upper James Street, City of Hamilton - Supported by the Planning and Economic Development Department (PED06168) (Ward 8) - Page 3 of 7

With the exception of the existing Barton Stone United Church located at the southwest corner of Upper James Street and Stone Church Road West, the entire Upper James Street corridor between Stone Church Road West and Rymal Road, including the lands at 1452 Upper James Street, is designated 'Commercial' on Schedule A – Land Use Concept to the Hamilton Official Plan. As such, the long term intent is for the area to develop for commercial purposes.

In staff's opinion, the proposed outdoor patio would not appear to negatively impact the dwelling or its outdoor amenity area on the abutting residentially zoned property. As a result, the requested variance was considered to be minor in nature and desirable for the appropriate use of the lands. The general intent and purpose of the Official Plan and Zoning By-law would also be maintained. The four tests for a minor variance pursuant to Section 45 of the Planning Act would be satisfied.

ALTERNATIVES FOR CONSIDERATION:

Option 1

Council may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee of Adjustment decision, and to retain outside professional(s).

Option 2

Council may decide to support the applicant's appeal against the Committee of Adjustment's decision to deny, and direct Legal Services to attend the Ontario Municipal Board Hearing in support of the application and to use City Planning staff as its professional witness.

Option 3

Council may decide to not send Legal Services to the Ontario Municipal Board, either in support of the Committee's decision or against the decision.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: Planning and Economic Development Department staff supported the subject application. However, if Council wishes to support the Committee denial, the City must seek out an outside planning consultant who can professionally support the denial. If retained, the cost of hiring the planner for the hearing is estimated at \$2,500 to \$5,000. In addition, one lawyer from Legal Services would be required for preparation and attendance at the hearing. Legal and planning staff costs are covered by the respective Departmental Work Programs/Budgets.

SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-06:35, for Property Known as 1400 Upper James Street, City of Hamilton - Supported by the Planning and Economic Development Department (PED06168) (Ward 8) - Page 4 of 7

Staffing: One representative from Legal Services would be required for preparation and attendance at the Ontario Municipal Board Hearing should Council support either Options 1 or 2 above. One member of planning staff would attend as an expert witness at the hearing should Council support Option 2 above.

Legal: N/A.

POLICIES AFFECTING PROPOSAL:

- Hamilton-Wentworth Official Plan

The subject property is designated “Urban Area” and the proposal complies with the Hamilton-Wentworth Official Plan.

- Hamilton Official Plan

The property is designated “Commercial”.

Policy A.2.2.1 states, “The primary uses permitted in the areas exceeding 0.4 hectare designated on Schedule "A" as COMMERCIAL will be for Commerce. In this regard, Commerce is defined as establishments involved in the buying and selling of goods and services; business offices; and hotels, convention and entertainment facilities.”

The subject property is located within an Extended Commercial (“Highway” Commercial) area. As such, the following policies were also used to evaluate the proposal:

“A.2.14 The EXTENDED COMMERCIAL category applies to existing stretches of individually managed Commercial establishments located along Arterial Roads, serving both pedestrian and automobile borne trade. It consists of:

- i) "Ribbon" Commercial uses on smaller lots serving predominantly residents and pedestrians in the vicinity, with some specialized Commercial uses attracting automobile borne traffic from beyond the local area; and,
- ii) Larger scaled "Highway" Commercial uses on deep lots, reliant on locations readily accessible to private vehicles specifically coming to, and parking on, the premises to do business.

SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-06:35, for Property Known as 1400 Upper James Street, City of Hamilton - Supported by the Planning and Economic Development Department (PED06168) (Ward 8) - Page 5 of 7

A.2.2.15 Council recognizes EXTENDED COMMERCIAL areas as viable forms of Commercial development that satisfy the needs of certain businesses for visibility and accessibility.”

The property is also located within Special Policy Area 31c on Schedule B – Special Policy Areas which is subject to the following policies:

“A.2.9.3.26 In keeping with the provisions of Subsection 2.2 - Commercial Uses, for those lands shown on Schedule "B" as SPECIAL POLICY AREA 31, (which includes 31a, 31b and 31c), and designated "Commercial" on Schedule "A" the following will apply:

- i) The Upper James Street frontage is recognized as a highway-oriented Commercial area which will include a diversity of retail and service uses catering not only to the travelling public, but to the daily needs of the adjacent neighbourhoods.
- ii) In keeping with Clause i) above, three sub-areas are identified to provide the following uses within the SPECIAL POLICY AREA:
 - c) in AREAS "31c", neighbourhood-based retail and service uses catering to the adjacent Residential areas will be permitted. However, in the case of the Area identified as "31c", located mid-block between Stone Church Road and Rymal Road, in the vicinity of a mid-block collector (as may be determined through the Neighbourhood Plan), retail warehouse uses will also be permitted in addition to neighbourhood-based retail and service uses. Development of these Areas may take place east-west along the collector (as opposed to the Upper James Street frontage).”

The proposal maintains the purpose and intent of the Official Plan.

- Neighbourhood Plan

The subject property and the abutting residentially zoned lands to the south are designated for “Commercial Retail Warehouse” by the Mewburn Neighbourhood Plan, which was approved by Council on July 28, 1987.

The proposal conforms to the approved Neighbourhood Plan.

SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-06:35, for Property Known as 1400 Upper James Street, City of Hamilton - Supported by the Planning and Economic Development Department (PED06168) (Ward 8) - Page 6 of 7

- Hamilton Zoning By-law No. 6593

The subject property is zoned “H/S-1061” – (Community Shopping and Commercial, etc.) District, Modified, which permits a wide range of commercial uses including restaurants and outdoor patios. The Zoning By-law provides “Special Requirements For Outdoor Patios” including, among other requirements, the following:

“(11) Notwithstanding any of the provisions of the By-Law, every outdoor patio shall comply with the following, (86-223).

(b) Location Requirements:

1. Except as provided in Paragraph 2, no outdoor patio shall be located where any lot line adjoins a residential district or is separated from a residential district by a lane or alley.

(c) Lighting Requirement:

1. All lighting for an outdoor patio shall be directed only towards and onto the area occupied by the outdoor patio and away from adjoining land, buildings and streets;

(e) Land Use Requirement:

1. No part of the land on which the outdoor patio is situated shall be used as a place of entertainment for the purpose of providing entertainment or amusement including live or recorded music or dance facilities.”

The purpose and intent of the By-law is to ensure that any negative impacts such as noise and lack of privacy are avoided from outdoor patios located in close proximity to residential areas. On the basis of distance separation, adequate screening, buffering by a commercial parking area, and the Official Plan policies which designate the corridor along Upper James Street for commercial use, the proposal maintains the purpose and intent of the By-law.

RELEVANT CONSULTATION:

- Legal Services Division.

SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-06:35, for Property Known as 1400 Upper James Street, City of Hamilton - Supported by the Planning and Economic Development Department (PED06168) (Ward 8) - Page 7 of 7

CITY STRATEGIC COMMITMENT:

By evaluating the “**Triple Bottom Line**”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. **Yes** **No**

The public are involved in the definition and development of local solutions.

Environmental Well-Being is enhanced. **Yes** **No**

Ecological function and the natural heritage system are protected.

Economic Well-Being is enhanced. **Yes** **No**

Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines?

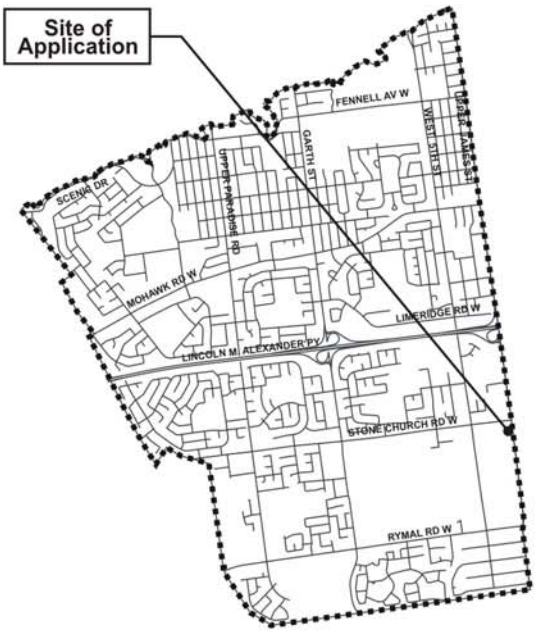
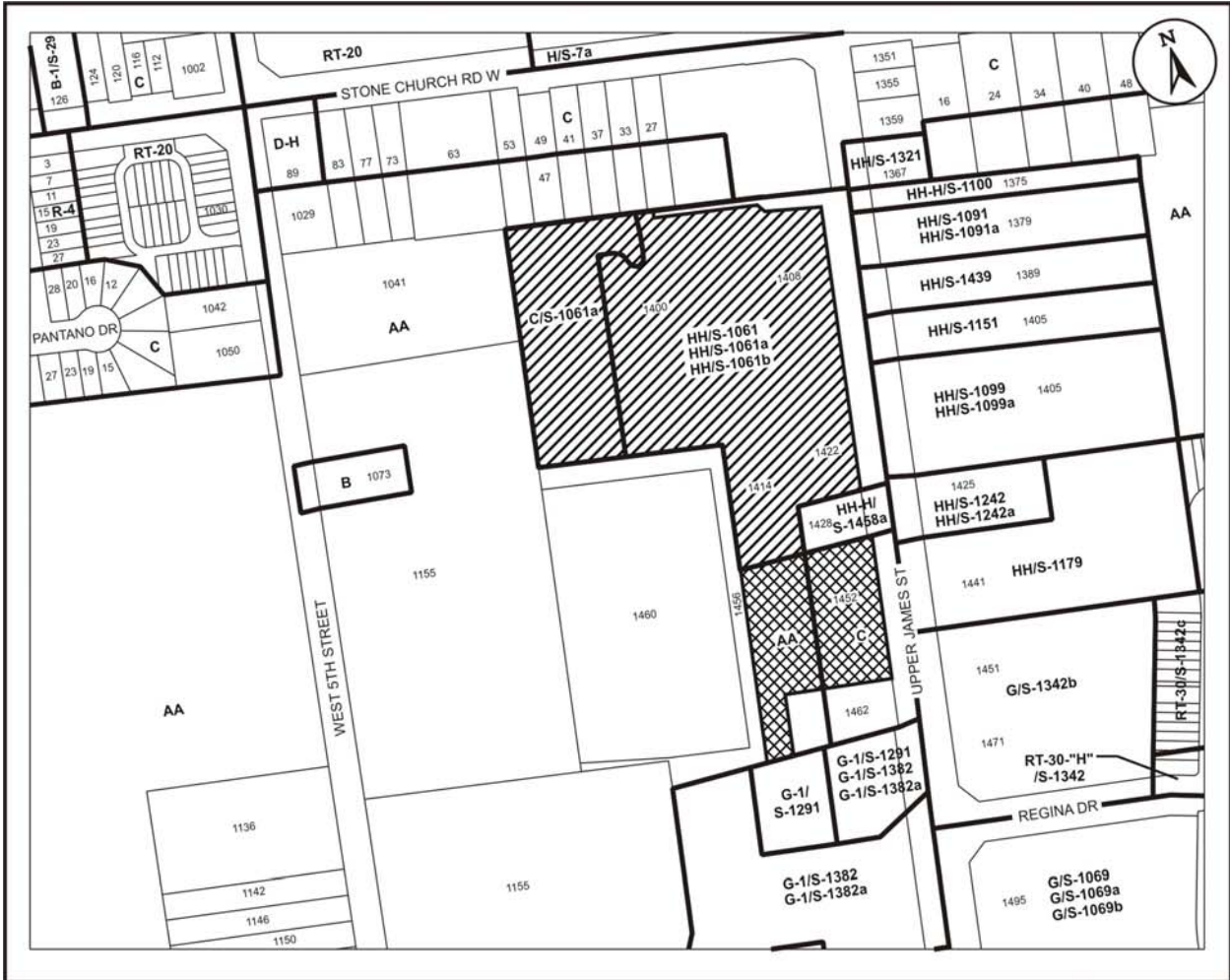
Yes **No**

Do the options you are recommending make Hamilton a City of choice for high performance public servants?

Yes **No**

:JG

Attachs. (4)



Ward 8 Keymap

N.T.S.

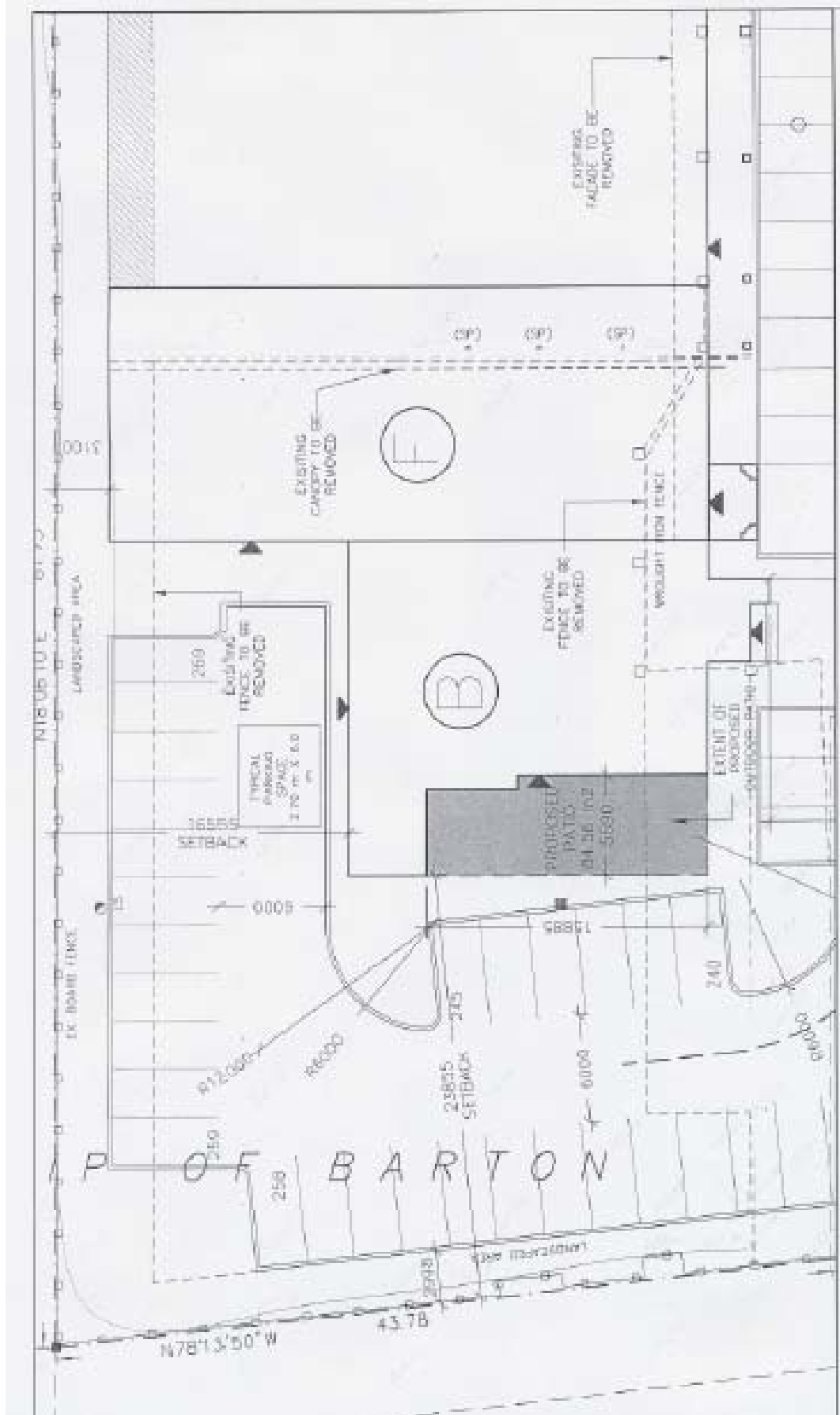
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

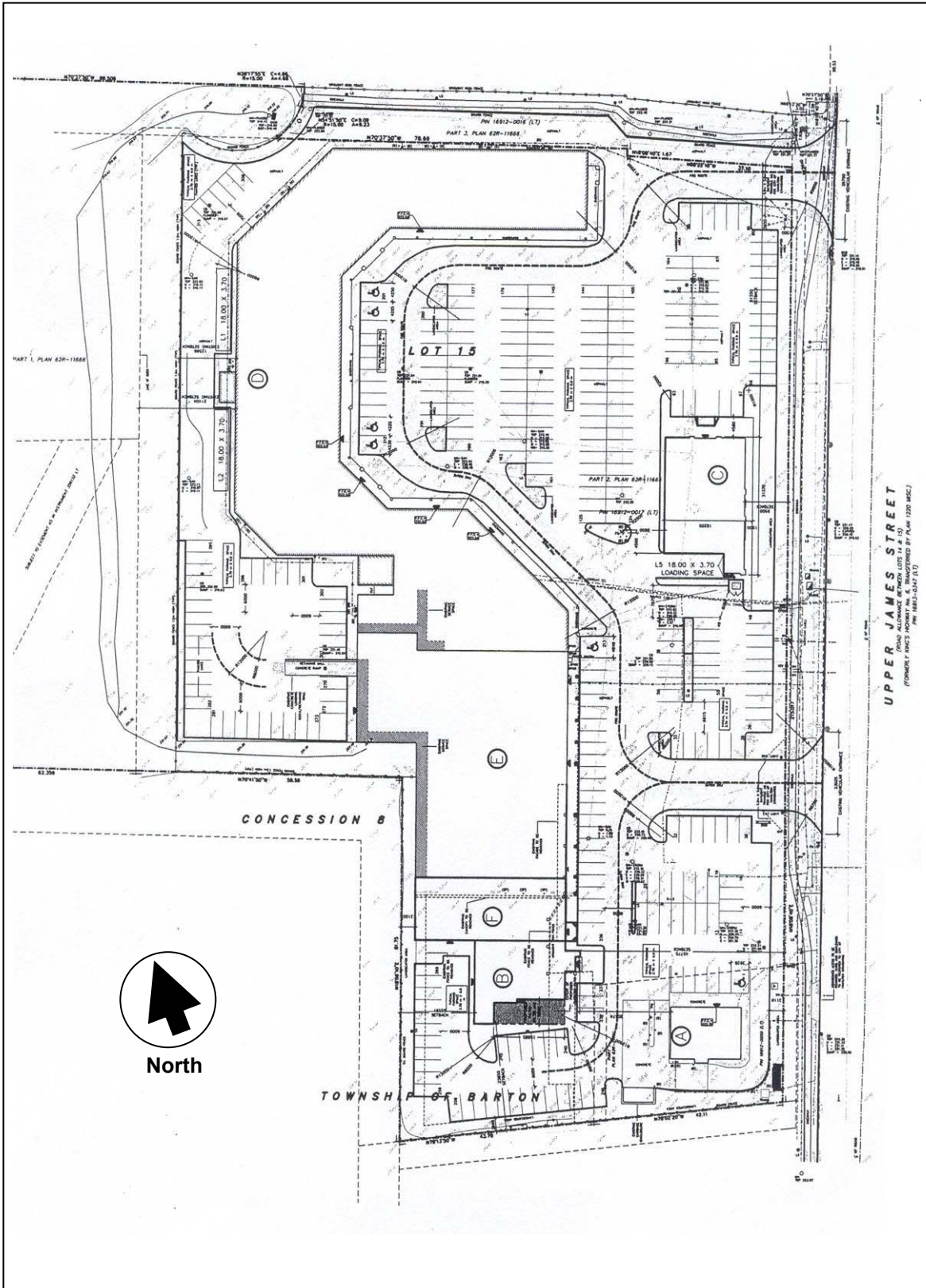


Location Map

File Name/Number: 1400_Upper_James_St	Date: May 08, 2006
Appendix "A"	Scale: N.T.S.
	Planner/Technician: JG/LM

- Subject Lands**
1400 Upper James Street
- Residentially Zoned Land Affected**
1452 Upper James







Committee of Adjustment
City Hall
7th floor, 71 Main Street West
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT
DECISION OF THE COMMITTEE

APPLICATION NO. HM/A-06:35
SUBMISSION NO. A-35/06

IN THE MATTER OF The Planning Act, 1990 and of the Zoning By-Law No. 6593, of the City of Hamilton, Sections 14A and 19B Schedules S-1061, 1061A and 1061B.

AND IN THE MATTER OF the Premises known as Municipal number 1400 Upper James Street, in the City of Hamilton and in an "HH" (**Restricted Community Shopping and Commercial**) district;

AND IN THE MATTER OF AN APPLICATION by the agent Daniel Cusimano Architect on behalf of the owner Rencoast Holdings, for relief from the provisions of the Zoning By-Law No. 6593, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit a proposed 84.58 m² outdoor patio to the restaurant under construction notwithstanding that an outdoor patio abutting residential is not permitted.

THE DECISION OF THE COMMITTEE IS:

That the said application **IS DENIED** for the following reasons:


1. The Committee having regard to the evidence is of the opinion that the relief requested would have an adverse impact (such as noise and lack of privacy) on the abutting residential property to the south known municipally as 1452 Upper James Street.
2. The Committee having regard to the evidence is of the opinion that the relief requested is beyond that of a minor nature.
3. The relief requested is undesirable for the appropriate development of the land and building and is inconsistent with the general intent and purpose of the By-law and of the Official Plan as referred to in Section 45 of The Planning Act, 1990.
4. The Committee having regard to the intensity of use of the subject parcel of land is of the opinion that such development would not be appropriate for the lands.

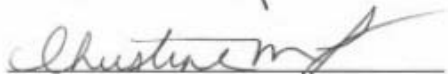
DATED AT HAMILTON this 15th day of March, 2006

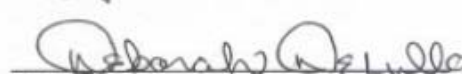

M. Dudzic (Chairman)


D. Serwatak


D. Drury


V. Abraham


C. Lewis


D. DeLullo

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS **April 4th, 2006.**

NOTE: This decision is not final and binding unless otherwise noted.