

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



18-250-LPAT
Attachment 1

ISSUE DATE: August 16, 2018

CASE NO(S):

PL171270

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Sammani 786 Inc.
Subject:	Application to amend Zoning By-law No. 6593 - Neglect of the City of Hamilton to make a decision
Existing Zoning:	"G-3/S-1214" Districts (Public Parking Lots) and "G-4/S-1214a" Districts (Designed Neighbourhood Shopping Area)
Proposed Zoning:	"H" Districts (Community Shopping and Commercial, etc.), with site specific modifications
Purpose:	To permit the renovation of the existing building to accommodate a Veterinary Practice on the ground floor, and to construct a second storey to accommodate four new residential apartment units.
Property Address/Description:	952-954 Concession Street
Municipality:	City of Hamilton
Municipality File No.:	ZAR-17-010
OMB Case No.:	PL171270
OMB File No.:	PL171270
OMB Case Name:	Sammani 786 Inc. v. Hamilton (City)

Heard: May 15 to 18, 2018 in Hamilton, Ontario

APPEARANCES:**Parties**

Sammani 786 Inc.

City of Hamilton

Counsel

Denise Baker

Patrick MacDonald

DECISION DELIVERED BY MARCIA VALIANTE AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Sammani 786 Inc. (“Applicant”) applied to the City of Hamilton (“City”) in December 2016 for a zoning by-law amendment (“ZBLA”) to permit the redevelopment of an existing one storey commercial building located at 952-954 Concession Street (“subject property”) into a veterinary clinic with apartments above. The application was deemed complete on January 9, 2017. City Planning Staff recommended approval of the application; however, at its meeting on November 14, 2017, the Planning Committee decided to recommend refusal to City Council.

[2] On November 17, 2017, the Applicant appealed the City’s failure to make a decision on its application within the requisite statutory period, in accordance with s. 34(11) of the *Planning Act*, to the Ontario Municipal Board (“Board”). On April 3, 2018, the *Local Planning Appeal Tribunal Act, 2017* (“LPATA”) was proclaimed in force and the Board was continued as the Local Planning Appeal Tribunal (“Tribunal”).

[3] Subsequent to the Applicant filing the appeal, on November 22, 2017, City Council voted to adopt the Planning Committee recommendation to refuse the application.

[4] The Tribunal heard the appeal over four days, from May 15 to 18, 2018. The Applicant called two witnesses. Mike Crough, Senior Planner with IBI Group, and Alana Fulford, Planner I with the City, who appeared under summons, were both qualified to

give opinion evidence in matters of land use planning. The City called one witness, Allan Ramsay, principal in Allan Ramsay Planning Associates Inc., who was also qualified in the area of land use planning. Three individuals residing in the area were granted Participant status: Danusia Szpak, Robert Whitelaw and Peter O'Hagan; however, only Ms. Szpak and Mr. O'Hagan testified at the hearing.

[5] The subject property is located at the southwest corner of a "T" intersection of Concession Street and Upper Gage Avenue in the East Mountain area of the City. On the subject property at present is a one-storey commercial building of 395 square metres, with four units, and a surface parking lot. Primary access to the parking lot is from Concession Street, with a secondary access from Upper Gage Avenue via a public laneway abutting the site on the south. The subject property has been used for a variety of commercial purposes for approximately 70 years. Directly across Concession Street to the north is Mountain Drive Park, while land use on the block to the west and south and across Upper Gage Avenue to the east is primarily residential, dominated by one-, one and one-half-, and two-storey detached dwellings. Within the broader neighbourhood along Concession Street to the west are the Juravinski Hospital and Cancer Centre, commercial plazas and apartment buildings. To the south are occasional commercial sites and a cluster of commercial uses on Crockett Avenue.

[6] The current zoning on the subject property is the result of previous site-specific amendments in 1992 and 1993 to By-law No. 6593 of the former City of Hamilton. The subject property is divided between "G-3/S-1214 (Public Parking Lot – Modified) District" and "G-4/S-1214a (Designed Neighbourhood Shopping Area – Modified) District". The current zoning does not permit use for an "animal hospital" (which would include a veterinary service) or for residential use. The new comprehensive zoning by-law, By-law No. 05-200, is not in force for the subject property. According to the Planning Staff Report, lands that were subject to existing planning applications, including the subject property, were excluded from By-law No. 05-200. It appears that City Council adopted By-law No. 17-240, which establishes the new Commercial and Mixed Use ("CMU") Zones for the purpose of By-law No. 05-200, but that by-law is under separate appeal to

the Tribunal. The Staff Report indicates that when the new CMU Zones come into effect, it is intended that the subject property would be brought in by way of by-law amendment and thereafter be included in the Neighbourhood Commercial (“C2”) Zone.

[7] The Applicant seeks the proposed ZBLA to permit renovation of the existing building to accommodate a veterinary clinic on the ground floor and associated storage in the basement and addition of a second storey, in which three two-bedroom residential units would be constructed. The proposed ZBLA would authorize the veterinary clinic use and the residential use above the clinic. The existing building does not meet the setback requirements in the by-law, so the proposed ZBLA would also allow for modifications to several performance standards.

[8] The main issues in dispute are whether the proposed ZBLA conforms with the Urban Hamilton Official Plan (“UHOP”), whether a veterinary clinic is an appropriate use on the subject property, and whether residential use above a veterinary clinic is appropriate and good planning. The parties agreed that parking and traffic are not in issue in this appeal.

[9] According to an agreed statement of facts, the planning witnesses agreed that the proposed ZBLA is consistent with the Provincial Policy Statement, 2014 and conforms with the Growth Plan for the Greater Golden Horseshoe, 2017. The Tribunal relies on this evidence. In reaching its decision, the Tribunal has had regard to the decision of City Council and the information and material before City Council when it made its decision.

ANALYSIS AND FINDINGS

Official Plan Conformity

[10] Under the UHOP, the subject property is within the “Neighbourhoods” urban structure designation. Mr. Crough testified that, in his opinion, the proposed ZBLA conforms with the UHOP policies applicable to this designation. He highlighted policies

providing that Neighbourhoods are to function as complete communities and that permitted uses include residential and “local commercial” uses, including “veterinary service” as a specifically permitted type of local commercial use. Mr. Crough also pointed to the UHOP Neighbourhoods policy that permits local commercial uses in “multiple storey buildings with the local commercial uses on the ground floor and residential units above,” subject to certain regulations, all of which are met by the proposed development. He also emphasized that the proposed development meets the UHOP policy supporting residential intensification and matters of compatibility with adjacent uses, relationships to nearby residential buildings, and enhancement of the streetscape.

[11] The Planning Staff Report, dated November 14, 2017, was prepared by Ms. Fulford and approved and submitted to the Planning Committee by Steve Robichaud, the Director of Planning and Chief Planner of the City. The Staff Report concluded that the proposed development implements the intent and purpose of the UHOP. The Staff Report states that the proposed uses are permitted, that the built form meets the UHOP policy by having the residential units on the second storey and that the design will enhance the streetscape and will be compatible with the surrounding built form of primarily residences ranging from one to two storeys. Ms. Fulford testified that she remains of the opinion that the proposed development meets the intent and purpose of the UHOP.

[12] Mr. Ramsay provided his opinion that the proposed development will not meet many UHOP policies. He stated that he considers the subject property to be suitable for some form of intensification but the proposed development does not meet the UHOP requirement that development in established Neighbourhoods is to maintain and enhance and be compatible with the existing scale, character and use of adjacent and nearby lands. In his opinion, the proposed development is too large for the size and constraints of the lot, will provide inadequate landscaping, and will create potential privacy and overlook concerns.

[13] Chapter E of the UHOP addresses urban structure. As noted above, the subject property is located within the Neighbourhoods designation. Part E.3.0 of the UHOP contains the Neighbourhoods Designation policies. Areas designated as Neighbourhoods are to function as complete communities by including “the full range of residential dwelling types and densities as well as supporting uses intended to serve the local residents” (s. 3.2.1). Permitted uses include residential dwellings and “local commercial uses” (s. 3.2.3). Supporting uses, including local commercial uses, are to be no greater than 4 hectares and should be “clustered to create a focal point for the neighbourhood and to facilitate access by all forms of transportation” (s. 3.2.5, s. 3.2.6).

[14] Local commercial policies are found in Part 3.8 of the UHOP. Section 3.8.1 provides that such uses that “primarily cater to the weekly and daily needs of residents within the surrounding neighbourhood” may be permitted and s. 3.8.2 specifies what uses shall be permitted, including “retail and service uses such as ... veterinary service.” The UHOP permits local commercial uses in several forms of building, including on the ground floor of a multi-storey building with residential units above. In terms of design, local commercial uses shall front on, and have access to, major or minor arterial or collector roads, provide safe and convenient access for pedestrians and cyclists and “be compatible with the surrounding area in terms of design, massing, height, setbacks, on-site parking, noise impact, landscaping and lighting.” Residential units in a mixed-use building are to be located above the ground floor.

[15] Residential intensification projects in the Neighbourhoods designation are permitted by the UHOP, but require consideration of several matters that are set out in Chapter B, s. 2.4.2. Chief among these are compatibility with adjacent land uses, relationship with height, massing, scale of nearby residences and transitions to adjacent residential buildings.

[16] The term “veterinary service” is not defined in the UHOP, but is defined in By-law No. 05-200 to mean “a use within a wholly enclosed building or part thereof, where domestic animals or household pets are provided treatment by a veterinarian and may

include temporary indoor accommodation related to treatment and/or recovery and pet grooming but shall not include a kennel.” There is no dispute that the Applicant’s proposed use of the ground floor of the building for a veterinary clinic, without commercial boarding or cremation facilities, falls within this meaning of veterinary service and that it is intended to cater to needs of nearby residents, and thus constitutes a “local commercial use” which is permitted in the Neighbourhoods designation. The UHOP specifically permits residential units above a local commercial use. The Tribunal finds that, subject to issues of scale, design and compatibility, the two uses in the proposed development conform with the UHOP policies on permitted uses.

[17] The heart of the dispute between the parties is whether the form of the proposed development meets the UHOP policies requiring compatibility and appropriate scale and design. Compatibility is defined in the UHOP to mean “land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area. *Compatibility or compatible* should not be narrowly interpreted to mean ‘the same as’ or even as ‘being similar to’.”

[18] Mr. Ramsay testified that he considers the proposed development to be an overdevelopment of the subject property, with massing and design that is out of character with the adjacent lands. He also stated that the subject property will be overdeveloped for its intended use as a veterinary clinic. He reviewed and analyzed veterinary clinics in the City and concluded that the proposed development would have one of the smallest sites, yet one of the largest buildings, for this use, with a 33% greater floor space index than any other comparable building in the City containing a veterinary clinic.

[19] In Mr. Crough’s opinion, comparing the proposed development with other veterinary clinics across the City is irrelevant and it is more appropriate to compare it with other multi-storey mixed-use buildings along Concession Street, which he did. He concluded from this analysis that the “proposed building typology and size are comparable to existing buildings along Concession Street. The proposed development

would not be the largest nor most intense development, and would generally fall within the middle range of lot coverage and [floor area ratio] numbers.” Despite this conclusion, Mr. Crough admitted that the properties he analysed were all located within the Concession Street Business Improvement Area (“BIA”), more than 500 metres (“m”) away from the subject property, and that they all did not include residential uses.

[20] The focus of the UHOP policies is on compatibility with the surrounding area in terms of design, massing, height, setbacks, parking, noise and landscaping. Although Concession Street does contain a variety of uses and building types, the subject property is the only commercial site within the immediately surrounding area, with most properties being used for residential in a range of building forms. In terms of building height, the proposed development would be two storeys. The witnesses agreed that a height of two storeys is not incompatible with the surrounding buildings.

[21] Mr. Ramsay stated that using the existing building footprint and adding another full storey, with a flat roof, would permit a building mass that is imposing on the streetscape and out of character with the immediate area. This is in part due to the lack of setbacks from the street for the existing building. He recommended that the building should step back above the first floor. Mr. Crough disagreed that the massing is out of character and stated that, in his opinion, the proposed development will result in an improvement to the streetscape. When questioned, Mr. Ramsay agreed that the flat roof at the height of the top of the second storey of the proposed development would be the same as the height of the existing building, approximately 6 m, with an additional 1.82 m dedicated to a roof system to screen the HVAC system. He agreed that the roof system could be modified as part of the site plan.

[22] Mr. O’Hagan testified that he does not object to a two-storey building on the subject property, but prefers that it be a solely residential building. He also raised concerns with the adequacy of on-site parking and safety of access via the public laneway. Ms. Szpak raised a concern with a two-storey building due to its potential to limit sight lines for drivers turning at the intersection; however, she had no evidence

supporting this concern. She also raised a concern with how busy the parking lot would be for a successful veterinary practice and the potential for conflict with traffic taking a short-cut through the parking lot to avoid a red light at the corner, which she stated already occurs. Notwithstanding these expressions of concern, as noted above parking and traffic are not issues in this proceeding.

[23] Compatibility does not require that new development be identical to existing building forms but only that it be “mutually tolerant and capable of existing together in harmony”. Determining compatibility requires looking at the proposal as a whole and weighing the relevant factors as they interact. The proposal here is not to create a new commercial use in a predominantly residential area, but to change the historic commercial use that forms part of the character of the area and add a second storey to the existing building. The evidence does not demonstrate that the roof design would significantly change the impact of the building from what currently exists. It is also relevant that the subject property is at the intersection of two minor arterial roads. Despite fronting onto both roads, the design of the existing building “turns its back on the street”, in Mr. Crough’s words. The UHOP indicates that new local commercial uses are to be located close to the street to create a strong pedestrian orientation and provide windows and signage facing the street. The proposed development will add mass, but that mass will frame the corner and be balanced by several design features, including new fenestration and materials, that will enhance the streetscape at this location. The plans were revised to add an entrance to the veterinary clinic directly from Concession Street, in order to conform with the UHOP policy that a principal entrance face the arterial road.

[24] The UHOP states that new local commercial uses shall be “clustered and generally located at intersections with arterial and collector roads.” The proposed development is not clustered with other commercial uses, but is located on the lone, already established, commercial site in the immediately surrounding area. Clustering applies to new commercial uses, but the proposal would not establish a new commercial use; rather, it would continue commercial use on a site that has been used

for such purposes for decades. However, the location is at the intersection of two arterial roads.

[25] Mr. Ramsay raised the issue of conformity with the residential intensification policies in Part B, s. 2.4.2.2 of the UHOP, stating his opinion that the proposed residential component will not be compatible with adjacent land uses. The witnesses agreed that there will be no shadow impacts. Mr. Ramsay's concern was limited to the potential for overlook into the rear yard of the residence to the south from the proposed balcony of one of the new apartments. On cross-examination, Mr. Ramsay agreed that the current design has a recessed balcony on the second storey directly across from the side of the dwelling to the south, with only an indirect view into the rear yard. Mr. Ramsay conceded that there is no policy requiring there to be "no overlook" and that the potential here is minor. It was Mr. Crough's opinion that there is potential for overlook, but it is minimal and insufficient to amount to incompatibility. Ms. Fulford testified that privacy is assisted by the separation of the two lots due to the public laneway. Based on the evidence, the Tribunal agrees that there is only minimal potential for overlook and that this does not make the proposed development incompatible with adjacent land uses.

[26] The building design and massing were revised from the original proposal to respond to comments from City Planning and Urban Design Staff. The Tribunal finds that there is insufficient evidence to conclude that the proposed development will be incompatible with the surrounding area in terms of design, height and massing. The result will be a building that improves the streetscape at the intersection of two arterial roads. Thus, the Tribunal finds that the proposed development conforms with the intent and purpose of the policies in the UHOP. It should be noted that there is the opportunity to further refine details and elements of massing and design at the site plan approval stage.

[27] The City raised the issue of incompatibility with respect to the landscaping plan for the proposed development. The proposed development includes a planting strip

between 0.9 and 1.06 m wide along the westerly lot line, separating the parking area from the immediately neighbouring residence (this marks a reduction from the 1.5 m required in the existing site specific zoning). In Mr. Ramsay's opinion, this is not a sufficient buffer to the abutting residence nor will it improve site aesthetics. Mr. Crough testified that the existing condition is a board fence along the lot line with a narrow, ill-defined strip of 0.5 m at its greatest extent. In his opinion, the proposal "will improve the existing situation and provide enough space to maintain or replace the existing fence, with room for planting of narrow-growing vegetation such as cedars or vines." The Planning Staff Report states: "While deficient, the proposed planting strip is considered an improvement to the existing site conditions..."

[28] The UHOP provides that new development in the Neighbourhoods designation shall "improve existing landscape features and overall landscape character of the surrounding area" (s. 3.2.7(d)) and that development of local commercial uses shall be compatible in terms of landscaping (s. 3.8.9). While details remain to be worked out in the site plan, the evidence indicates that the minimum 0.9 m landscape strip along the westerly lot line will improve the existing features and will not be incompatible with the surrounding area. Thus, the Tribunal finds that the proposed landscaping conforms with the applicable UHOP policies.

Whether a veterinary clinic is an appropriate use on the subject property

[29] The City submits that, even if the UHOP permits a veterinary service as a local commercial use in an area designated Neighbourhoods, it is not an appropriate use of the subject property from a planning perspective. The City emphasizes that By-law No. 6593 only permits animal hospitals in a limited number of zones and imposes a 30 m separation distance between them and residential zones. The City points to Part F, s. 1.5.4 of the UHOP, which permits zoning by-law uses and regulations to be more restrictive than official plan policies and designations, and argues that this is an example of where greater restriction is appropriate, even if as a general matter the UHOP may permit a veterinary service.

[30] Mr. Ramsay testified that the proposed development would not meet the 30 m separation distance to a residential zone (and would have no distance separation within the building, as discussed in the next section). However, he admitted that, from his analysis of veterinary clinics in the City, this separation distance has not been consistently applied and there are a number of clinics in the City that do not meet the 30 m separation distance. He also did not speak to a planning justification for a minimum separation distance.

[31] The Applicant submits that By-law No. 05-200 does not include any separation distance between veterinary services and residential zones and, because this by-law implements the UHOP, it should be seen as reflecting the current City Council view on this issue. The Applicant also notes that City Council recently approved a veterinary service with only a separation distance of 2.75 m from a residential zone.

[32] The UHOP permits a zoning by-law to be more restrictive than the general policies, but there must be evidence supporting that a greater restriction is appropriate from a planning perspective. The 30 m separation distance in By-law No. 6593 applies broadly to animal hospitals, kennels and "any building or structure where animals are commercially kept or raised". Having a separation distance in the existing by-law by itself is not a sufficient basis for concluding that a similar separation distance is appropriate for a veterinary clinic that does not include commercial boarding, particularly in light of the absence of such a separation distance in the UHOP or By-law No. 05-200. No evidence was heard on the reason for a separation distance, but assuming that the reason is the potential for the creation of nuisances, there should be some evidence indicating that the proposed use would have that potential.

[33] A veterinary service, as a local commercial use, is permitted on the subject property under the UHOP. In By-law No. 17-240, which if approved will establish the policies for CMU Zones under By-law No. 05-200, a veterinary service that is not a kennel is permitted in the C2 Zone that is expected to apply to the subject property. No separation distance is specified. Here, there was no evidence presented to the Tribunal

which demonstrated that using the subject property for the particular commercial use of a veterinary clinic without overnight boarding would create a nuisance for the surrounding residential uses. Based on the evidence, the Tribunal finds that the use of the subject property for a veterinary clinic is appropriate.

Whether veterinary use and residential use are appropriate in the same structure

[34] The City argues that, while the UHOP permits establishment of residential units above local commercial uses, putting residential units above a veterinary clinic is not appropriate because of the potential for nuisance impacts. The City submits that there is only one example of residential use above a veterinary clinic within the City and that this is a deliberate policy choice.

[35] Mr. Ramsay testified that he considers residential and veterinary uses within a single structure to be incompatible because of the potential for nuisance, particularly from animal noises. Mr. O'Hagan also stated that he considers the two uses incompatible. When questioned, Mr. Ramsay admitted that his opinion was based on his personal experiences and anecdotal evidence and was not based on any study he had undertaken as a land use planner. He agreed that the UHOP and By-law No. 05-200 permit these uses together in a single structure. He conceded that he was not aware of the situation in any other municipality and had not reviewed official plans and zoning by-laws in other municipalities to determine whether his view is supported in other locations in the Greater Toronto Area.

[36] Given the lack of study or other testable evidence supporting his views, the Tribunal is left with only Mr. Ramsay's conclusory opinion that nuisance is a serious concern with the proposed development. The UHOP is not reflective of this concern. The UHOP specifically permits a veterinary service as a local commercial use in a Neighbourhoods designation and specifically permits residential units above a local commercial use. If there was a concern with the potential for nuisance, this could have been provided for in the UHOP. The UHOP does permit a zoning by-law to be more restrictive than official plan policies, but there must be evidence that such a restriction is

appropriate in the individual circumstance. By-law No. 05-200 recognizes a distinction between a veterinary service, where animals are treated, and a “kennel” where animals are boarded, and does not include a kennel as a local commercial use in a Neighbourhoods designation. Thus, the Tribunal finds that Mr. Ramsay’s concern with the incompatibility of a veterinary service and residential uses within a single building is not supported by the evidence.

Conclusion

[37] In conclusion, the Tribunal finds that the proposed development, as permitted in the proposed ZBLA, conforms with the UHOP and is appropriate for the subject property.

[38] Ms. Baker, counsel for the Applicant, requested that the Tribunal approve amendments to both By-law No. 6593 and By-law No. 05-200, with the latter contingent on that by-law coming into force with respect to the subject property. Mr. MacDonald, counsel for the City, opposed a contingent order in the circumstances, arguing that By-law No. 05-200 does not apply to the subject property and will not until an amending by-law is approved by City Council.

[39] LPATA s. 12(2) permits the Tribunal to “include in an order conditions that it considers fair in the circumstances, including a condition that the order comes into force at a future time or upon the performance of terms imposed by the Tribunal.” Given that By-law No. 05-200 does not apply to the subject property and will not until a new by-law is brought forward to City Council following the resolution of the separate Tribunal appeal of By-law No. 17-240, the Tribunal does not consider it appropriate in the circumstances to include a condition in its Order that By-law No. 05-200 be amended contingent on that by-law coming into force and effect with respect to the subject property.

ORDER

[40] The Tribunal orders that the appeal is allowed, and the City of Hamilton is directed to amend By-law No. 6593 in accordance with the Tribunal's decision and substantially as set out in Attachment 1 to this Order.

"Marcia Valiante"

MARCIA VALIANTE
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal
A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

CITY OF HAMILTON

BY-LAW NO. _____

To Amend Zoning By-law No. 6593, as amended

by By-laws No. 92-032 and 93-216,

Respecting Lands located at 952 – 954 Concession Street (Hamilton)

WHEREAS the *City of Hamilton Act, 1999*, Statutes of Ontario, 1999 Capt. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality “City of Hamilton”;

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former municipality known as “The Corporation of the City of Hamilton”, and is the successor to the former regional municipality, namely, “The Regional Municipality of Hamilton-Wentworth”;

AND WHEREAS the *City of Hamilton Act, 1999* provides that the Zoning By-laws of the former area municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS the Council of the Corporation of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) on the 25th day of July 1950, which by-law was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951 (File No. P.F.C. 3821);

AND WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That By-law No. 92-032 is repealed in its entirety.
2. That Section 2 of By-law No. 93-216 is deleted in its entirety.
3. That Sections 4(i) and (v) of By-law No. 93-216 are deleted in their entirety.
4. That Section 4(ii) of By-law No. 93-216 is amended by deleting the words "within the existing building only".
5. That Section 4(iii) of By-law No. 93-216 is amended by deleting the words "within the existing building only".
6. That Section 8 of By-law No. 93-216 is deleted in its entirety.
7. That Sheet No. E-25 of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), is amended by changing the zoning from the "G-e" (Public Parking Lots) District to the "G-4/S-1214b" (Designed Neighbourhood Shopping Area) District, Modified, on the lands comprised of "Block 1"; the extent and boundaries of which are shown on a plan hereto annexed as Schedule 'A' to this By-law.
8. That the "G-4" (Designed Neighbourhood Shopping Area) District provisions, as contained in Section 13D of Zoning By-law No. 6593, as amended by By-law No. 93-216, applicable to the lands comprised of "Block 1" and "Block 2", the extent and boundaries of which are shown on a plan hereto annexed as Schedule 'A', are further amended as follows:
 - a. In addition to the uses permitted in Section 13D(1)B and By-law No. 93-216, as amended by this By-law, an animal hospital, excluding cremation, shall be permitted.
 - b. The commercial uses shall be restricted to the ground floor of the building, and further, the cellar of the building shall only be used for storage for the commercial uses.

- c. In addition to the uses permitted in Section 13D(1), a maximum of three dwelling units shall be permitted in the same building with a permitted commercial use, provided that the dwelling unit is located above the ground floor, except for access and utility areas, and provided further that the total gross floor area of the portion of the building used for dwelling units, except for access and utility areas, does not exceed the total gross floor area used for commercial purposes.
- d. Notwithstanding Section 13D(4)(i), a minimum front yard of a depth of at least 0.35 metres shall be provided and maintained.
- e. Notwithstanding Section 13D(4)(ii), a minimum side yard along the easterly lot line of a width of at least 0.30 metres shall be provided and maintained.
- f. Notwithstanding Section 13D(4)(iii), a rear yard of a depth of 0.0 metres.
- g. Notwithstanding Section 13D(7)(i), a planting strip of not less than 0.9 metres in width shall be provided and maintained along the westerly side lot line adjoining a residential district or use, except where a building, structure of accessory building is located and except for the area used for access driveways.
- h. Section 13D(7)(ii) shall not apply.
- i. Notwithstanding Section 18(3)(vi)(a), a chimney, sill, belt course, leader, pilaster, lintel or ornamental projection may project not more than 0.35 metres into the required front yard, and not more than 0.3 metres into the required side yard along the easterly lot line.
- j. Notwithstanding Section 18(3)(vi)(b)(i) and (iii), a cornice, eave or gutter may project not more than 0.35 metres into the required front yard, and not more than 0.3 metres into the required side yard along the easterly lot line.
- k. Notwithstanding Section 18(3)(vi)(c)(ii), an open stairway may project not more than 0.35 metres into the required front yard, and may project not more than 0.3 metres into the required side yard along the easterly lot line.

- l. Notwithstanding Section 18(3)(vi)(e), a terrace, uncovered porch, platform or ornamental feature which does not extend more than 1.0 metre (3.28 feet) above the floor level of the first storey, may project not more than 0.35 metres into the required front yard, and not more than 0.3 metres into the required side yard along the easterly lot line.
 - m. Notwithstanding Section 18(3)(vi)(k), a building may encroach or further encroach for the purpose only of refacing the building, not more than 0.35 metres into the required front yard, and not more than 0.3 metres into the required side yard along the easterly lot line.
 - n. Notwithstanding Section 18A(7), every required parking space, other than a parallel parking space, shall have dimensions not less than 2.7 metres wide and 5.8 metres long.
 - o. Notwithstanding Section 18A(11)(a), the boundary of every parking area and loading space on a lot containing five or more parking spaces and located on the surface of a lot adjoining a residential district shall be fixed not less than 0.9 metres from the adjoining residential district boundary.
 - p. Section 18A(11)(b) shall not apply.
 - q. Notwithstanding Section 18A(16), each required visitor parking space shall,
 - i. Be maintained for the shared use between the commercial use and the residential use;
 - ii. Have a sign appurtenant thereto legibly marked that the parking space is for the shared use of both commercial and residential visitor parking; and
 - iii. Be maintained readily accessible for either use, free and clear of all obstructions.
 - r. Section 18A(26) shall not apply.
9. No building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure of part thereof be used, nor shall any land be used, except in accordance with the "G-4" District provisions, as amended by By-law

93-216, subject to the special requirements referred to in Section 8 of this By-law.

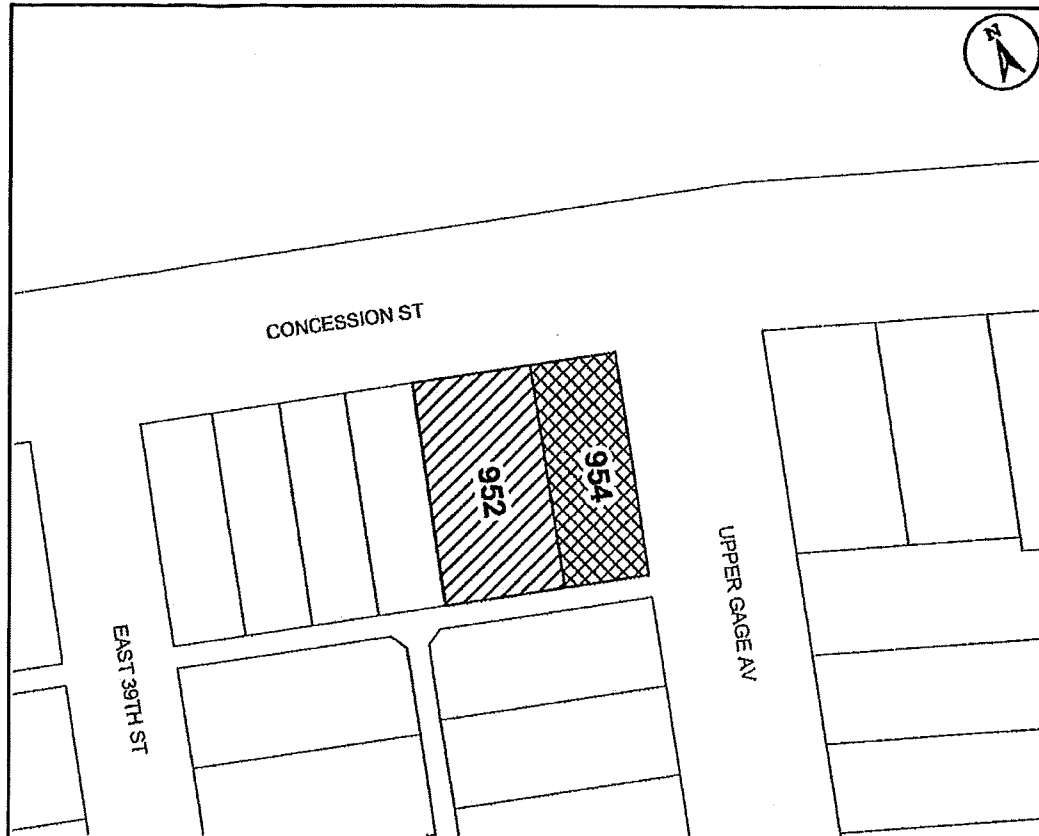
10. That Zoning By-law No. 6593 is amended by adding this By-law to Section 19B as Schedule S-1214b.

11. That Sheet No. E-35 of the District Maps is amended by marking the lands referred to as "Block 2" in Section 8 of this By-law as S-1214b.

12. In all other respects, By-law No. 93-216 is hereby confirmed, unchanged.

13. That the Clerk is hereby authorized and directed to proceed with the giving of notice of passing of this By-law, in accordance with the *Planning Act*.

PASSED and ENACTED this ____ day of _____, 2018.



This is Schedule "A" to By-law No. 17- Passed the day of, 2017		----- Mayor ----- Clerk
<h2 style="margin: 0;">Schedule "A"</h2> <h3 style="margin: 0;">Map Forming Part of By-law No. 17-_____</h3> <h3 style="margin: 0;">to Amend By-law No. 6593</h3>		Subject Property 952-954 Concession Street, Hamilton <div style="display: flex; align-items: flex-start;"> <div style="width: 20px; height: 10px; border: 1px solid black; margin-right: 5px; margin-bottom: 5px;"> </div> <div style="font-size: 0.8em;"> Block 1 - Change in zoning from the "G-3" (Public Parking Lots) District, to the "G-4/S-1214b" (Designed Neighbourhood Shopping Area) District, Modified </div> </div> <div style="display: flex; align-items: flex-start; margin-top: 5px;"> <div style="width: 20px; height: 10px; border: 1px solid black; margin-right: 5px; margin-bottom: 5px;"> </div> <div style="font-size: 0.8em;"> Block 2 - Change in zoning from the "G-4/S-1214a" (Designed Neighbourhood Shopping Area) District, Modified, to the "G-4/S-1214b" (Designed Neighbourhood Shopping Area) District, Modified </div> </div>
Scale: N.T.S. Date: Sept. 28, 2017	File Name/Number: ZAR-17-010 Planner/Technician: AF/NB	 Hamilton
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		