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Case Name:

Heritage Grove Centre Inc. v. Owen Sound (City)

Applicant(s) and Appellant(s): Heritage Grove Centre Inc.
Subject: Proposed Official Plan Amendment No. 42-59-LOPA-04

Legislative Authority: Subsection 17(24)
of the Planning Act, R.S.O. 1990,
c. P.13, as amended

Municipality(ies): City of Owen Sound
Applicant(s) and Appellant(s): Heritage
Grove Centre Inc. and Villarboit
Development Corporation

Subject: Site Plan

Legislative Authority: Subsection 41(12)
of the Planning Act, R.S.O. 1990,
c. P.13, as amended

Property Address/Description: 2125 16th St. East

Municipality(ies): City of Owen Sound
Heritage Grove Centre Inc. and Villarboit
Development Corporation have

appealed to the Ontario Municipal Board
under subsection 34(11) of the

Planning Act, R.S.O. 1990, c. P.13, as
amended, from Council's refusal to an
amendment, in its entirety, to Zoning
By-law 2010-078 of the City of Owen

Sound to allow a site specific amendment
to lands respecting 2125 16th

Street East. The lands are currently
zoned Retail Commercial Special

Provision 13.89 (C2 14.89). The amendment
to the Special Provision is to

allow the addition of a permitted use,
increase the total maximum permitted
gross floor area for retail and service
uses, reduce the minimum unit size

for a retail use, include a maximum floor

**area for all service uses combined
and eliminating individual size restrictions
on specific service uses and
adding new definitions**

[2014] O.M.B.D. No. 395

OMB Case No.: PL130079

OMB File Nos.: PL130079, PL130600, PL130444

Ontario Municipal Board
Owen Sound, Ontario

Panel: M.C. Denhez, Member

Heard: May 7, 2014.

Decision: June 3, 2014.

(10 paras.)

Appearances:

Heritage Grove Centre Inc. Villarboit Development Corporation: A. Stewart, representative.

City of Owen Sound: H. Elston, representative.

MEMORANDUM OF ORAL DECISION DELIVERED
BY M.C. DENHEZ AND ORDER OF THE
BOARD

- 1 This rezoning dispute about commercial development has been settled.
- 2 2125 16th St. East (the "subject property") is in the City of Owen Sound (the "City"), on the south side of 16th Street East, east of 18th Avenue East. It covers approximately 11.64 hectares (28.7 acres), and includes:
 - * A northern portion of 7.6 hectares (18.78 acres) had been zoned "Retail Commercial, subject to Special Provision 14.89" (C2 14.89) of Zoning By-Law No. 2010-078;

- * A southern portion of 4.04 hectares (10 acres) is designated "Residential" in the Official Plan, and had been zoned "Rural (RUR)." It is not part of this application.

3 In March 2012, Heritage Grove Centre Inc. and Villarboit Development Corporation (the "applicants") applied for an amendment to the City's Zoning By-law 2010-78. The intent was to increase the permitted Gross Floor Area ("GFA"), and to relax or eliminate GFA and unit size restrictions, so as to facilitate a new retail development. However, City Council refused the application, with concerns about potential market impact. The applicants appealed to the Ontario Municipal Board (the "Board").

4 However, after a series of pre-hearing conferences, the applicants and the City agreed on modifications to the application. They also agreed on a draft Zoning By-Law.

5 The Board was told that the turning point occurred in March 2014, when the applicants submitted an updated market analysis, which addressed intervening changes in the market -- including the closing of a Zellers store in 2013.

6 This also led to several changes in the applicants' proposal:

- * The original application proposed to add "Department Store" as a permitted use on the property. This request was withdrawn in the revised proposal.
- * The original application had also proposed to increase the maximum GFA for any combination of Retail Stores and Service Uses, from 12,890 square metres to 20,285 square metres. The revised proposal included a GFA maximum for Retail Stores and Service Uses of 17,443.7 square metres.
- * The original application proposed to eliminate the existing overall GFA cap for Retail Stores of 8,361 square metres. The revised proposal included an increased cap for Retail Stores of 14,865.7 square metres.
- * The original application proposed to eliminate the existing GFA caps for individual categories of Retail Stores. The revised proposal instead increased existing caps for each individual category, as follows:
 - * Furniture, Home Furnishings & Electronics: increasing the cap from 2,600 square metres to 3,716.4 square metres.

- * Pharmacies and Personal Care Stores: increasing the cap from 1,208 square metres to 1,393.6 square metres.
- * Clothing and Accessories: increasing the cap from 2,787 square metres to 3,716.4 square metres.
- * General Merchandise: increasing the cap from 2,182.65 square metres to 2,322.8 square metres.
- * Miscellaneous Retail: increasing the cap from 2,322 square metres to 4,645.5 square metres.

- * The original application proposed to decrease the minimum Retail Store size from 929 square metres to 464.5 square metres. The revised proposal decreased the minimum Retail Store size to 697 square metres, and included permission for up to five Retail Stores with no minimum unit size, provided that they collectively did not exceed 2,230 square metres in GFA.

- * The existing By-law provided for a minimum restaurant size of 464 square metres, but allowed smaller restaurants with no minimum unit size, provided that they collectively did not exceed 464 square metres. The revised proposal reduced the minimum restaurant size to 325.2 square metres, and maintained the permission for smaller restaurants.

7 On the basis of the above, the parties were able to agree on a new draft Zoning Bylaw, which formed part of their settlement. Its substantive provisions are reproduced at Attachment 1 herewith.

8 The Board considered the opinion of expert planner Wendy Nott, who stated that "the settlement is appropriate, in conformance with applicable policy, and represents good land-use planning in the public interest." The Board found no reason to disagree.

9 The Board had also granted participant status to the Downtown Improvement Association / Owen Sound. The Board was advised that the Association had written to the City, indicating that it registered no objection to this outcome.

10 The Board therefore disposes of the above matters as follows: the appeal is allowed, and Zoning By-law 2010-78 of the City of Owen Sound is hereby amended in the manner set out in Attachment 1 to this Order.

M.C. DENHEZ
MEMBER

* * * * *

ATTACHMENT 1

BY-LAW NO. 2014-066

THE CORPORATION OF THE CITY OF OWEN SOUND

A BY-LAW TO AMEND BY-LAW 2010-78 OF THE CITY OF OWEN SOUND, AS AMENDED, RESPECTING THE MODIFICATION OF SITE-SPECIFIC ZONING FOR LANDS KNOWN AS PART OF PARK LOT 8-9, RANGE 5, EGR PL OWEN SOUND: PART 1, 16R-9039 OWEN SOUND (HERITAGE GROVE CENTRE INC.)

Amendments pertaining to Special Provision 14.89 only:

- 1) Revise Clause 1a) by inserting the following words "*, according to the North American Industry Classification System (NAICS),*" following the words "Retail Stores".

- 2) Revise Section "vii. Floor Area Provisions:" by deleting Clauses "1.", "3.", and "4.", and replacing them with the following:

"1. Maximum gross floor area for any combination of uses permitted under Section 14.89.1 (a) and (b): 17,443.7 m²

3. Any combination of retail uses permitted under Section 14.89.1(a) shall be subject to a maximum gross floor area of 14,865.7 m² with no single use having a unit size less than 697 m² gross floor area, and subject to the following maximum gross floor area distribution:

a. Furniture, Home Furnishings & Electronics -- Max. 3,716.4 m²

b. Pharmacies and Personal Care Stores -- Max. 1,393.6 m²

c. Clothing and Accessories -- Max. 3,716.4 m²

d. General Merchandise -- Max. 2,322.8 m²

e. Miscellaneous Retail -- Max. 4,645.5 m²

4. Notwithstanding 14.89.2 (3) above, a total of five (5) individual Retail Stores with no minimum unit size may be permitted, provided they do not exceed 2,230 m² in aggregate and provided that the maximum gross floor area distribution per category is maintained as noted in 14.89.2 (3)."

- 3) Revise Section "vii. Floor Area Provisions:" by deleting Clause "5.e.", and replacing it with the following:

"e. Restaurants - Minimum unit size of 325.2 m², however smaller restaurants with no minimum unit size may be permitted provided that they do not exceed 464 m² in aggregate."

- 4) Insert the following new clause 14.89 6, after clause 14.89 5:

"6. Definitions for the purposes of Section 14.89:

"a) "Miscellaneous Retail" means retailers primarily engaged in the sale of the following goods:

(i) Sporting Goods;

(ii) Toys, Hobby, Games;

(iii) Sewing/Fabric/Needlework;

- (iv) Music/Books/Instruments;
- (v) Florist;
- (vi) Office Supply and Stationery;
- (vii) Gift/Novelty/Souvenir;
- (viii) Pet Supplies;
- (ix) Art Dealers; and,
- (x) Used Merchandise.