

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** June 03, 2014

**CASE NO(S):** PL130079

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  
OMB Case No. (s): PL130079  
OMB File No. (s): PL130079

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  
OMB Case No. (s): PL130079  
OMB File No. (s): PL130600

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 16<sup>th</sup> 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.  
OMB File No.: PL130444

**APPEARANCES:**

<u>Parties</u>	<u>Counsel<sup>+</sup>/Representative</u>
Heritage Grove Centre Inc. Villarboit Development Corporation	A. Stewart
City of Owen Sound	H. Elston

**HEARING EVENT INFORMATION:**

Hearing: Held in Owen Sound, Ontario on May 7, 2014

**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"*

M.C. DENHEZ  
MEMBER

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario

Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## 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 m<sup>2</sup>*

*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 m<sup>2</sup> with no single use having a unit size less than 697 m<sup>2</sup> gross floor area, and subject to the following maximum gross floor area distribution:*

*a. Furniture, Home Furnishings & Electronics – Max. 3,716.4 m<sup>2</sup>*

*b. Pharmacies and Personal Care Stores – Max. 1,393.6 m<sup>2</sup>*

*c. Clothing and Accessories – Max. 3,716.4 m<sup>2</sup>*

*d. General Merchandise – Max. 2,322.8 m<sup>2</sup>*

*e. Miscellaneous Retail – Max. 4,645.5 m<sup>2</sup>*

*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 m<sup>2</sup> 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;*
- (vii) Office Supply and Stationery;*
- (viii) Gift/Novelty/Souvenir;*
- (viii) Pet Supplies;*
- (ix) Art Dealers; and,*
- (x) Used Merchandise.*