

ISSUE DATE:

January 23, 2013



PL120968

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

Penretail Management Limited has 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 or neglect to enact a proposed amendment to Zoning By-law 2006-50 of the Town of Caledon to rezone lands respecting 12720 - 12788 Highway 50, Bolton, legally described as part of the East Half of Lot 4, Concession 6 (Albion) by modifying the existing General Commercial – Exception 432 (C-432) zoning by adding a supermarket as an additional permitted use.
OMB Case PL120968

APPEARANCES:

Parties

Counsel

Penretail Management Limited

S. D. Rogers

Town of Caledon

P. Gross

DECISION DELIVERED BY A. CHRISTOU AND ORDER OF THE BOARD

[1] The purpose of this by-law amendment is to modify the existing zoning of the property at 12720 to 12788 Highway 50, by adding a supermarket as a permitted use in an existing commercial plaza property. It is a 6 ha retail plaza anchored by a Home Depot as anchor. A Sport Check store is now vacant.

[2] On September 11, 2012, the Town of Caledon adopted a resolution, which instructed staff to attend this OMB hearing in support of the rezoning. Council cannot approve the Zoning By-law when it is under appeal before the Board.

[3] At the start of the hearing, Ms. Rogers, Counsel for Penretail Management Limited, ("Penretail") the Applicant/Appellant, advised the Board that the parties have reached an agreement and Council has endorsed the Zoning By-law permitting the addition of the supermarket to the list of permitted uses. Therefore, this would be a settlement hearing.

[4] Michael Goldberg, a qualified land use planner provided planning opinion evidence in support of the Zoning By-law Amendment. He situated the property at the southwest corner of Highway 50 and Healey Road.

[5] In terms of background, Mr. Goldberg provided:

- In June 2011, the predecessor of Penretail applied for rezoning to permit a supermarket not to exceed 3,716 m² in Gross Floor Area (GFA).
- On May 17, 2007, OMB issued a decision dealing with Case Number PL060104, and approved OPA 214 of the Town of Caledon Official Plan (Exhibit 1, Tab 3). Page 9 of the decision provides in 5.10.4.5.6A.3:

....

A supermarket with a minimum gross floor area of 3,716 square metres (40,000 square feet) subject to the following:

Council shall not enact a zoning by-law amendment to permit a supermarket prior to the earlier of:

- i) 18 months following the issuance of a building permit for a supermarket of a minimum size specified by the Town of Caledon in a zoning By-law adopted for that purpose, in a location that will be convenient to serve Bolton's North Hill area; or
- ii) March 27, 2012,

....

- On June 12, 2012, Town Staff reported to Council recommending Council enact a By-law to rezone the Applicant's land from General Commercial – Exception 432 (C-432) to permit the development of a supermarket to a maximum of 3,716 m² (Tab 13). Council, however, referred the report back to staff (Tab 14, p. 176).
- On July 13, 2012, Notice of Appeal was filed with the Town (Tab 15).
- On September 11, 2012, staff reported to Council (Tab 16), still recommending support for the rezoning application and recommend staff be authorized to appear at the Board in support of the application. Council concurred.

[6] Exhibit 2, the draft Zoning By-law, was submitted to the Board. It adds “supermarket” in the permitted uses list; and adds Special Standard (c), which provides the maximum GFA of 3,716 m².

[7] Mr. Goldberg opined that the By-law would be consistent with the Official Plan (“OP”) and the Provincial Policy Statement; it conforms to the Growth Plan and to the Peel Region OP; it is a good use of the property and allows for a use that was anticipated in the OP; it is a complementary use and constitutes an efficient use of land; it represents good planning and is in the public interest. He recommended the Board approve the By-law as shown on Exhibit 2.

[8] Mr. Gross concurred on behalf of the Town.

DISPOSITION

[9] The Board heard uncontradicted planning opinion evidence in support of a Zoning By-law that implements the OP. The proposed supermarket will provide service to the North Hill area of the Town of Bolton. Two staff reports supported the application as being good planning for the Town. The Board finds the By-law is consistent with the OP and the PPS and conforms to the Growth Plan and to the Peel Region OP. The supermarket would be complementary to the other uses in the plaza and constitutes an efficient use of land. It is therefore in the public interest.

[10] The Board orders that the appeal against Zoning By-law 2006-50 of the Town of Caledon is allowed in part, and Zoning By-law 2006-50 is amended as set out in Attachment 1 to this order. In all other respects, the Board orders the appeal is dismissed.

“A. Christou”

A. CHRISTOU
MEMBER

ATTACHMENT 1

THE CORPORATION OF THE TOWN OF CALEDON

BY-LAW NO. BL-2012-XXX-064

A by-law to amend Comprehensive Zoning By-law 2006-50, as amended, with respect to Part of the East Half of Lot 4, Concession 6 (Albion), Town of Caledon, Regional Municipality of Peel, municipally known as 12720 - 12788 Highway 50

WHEREAS Section 34 of the Planning Act, as amended, permits the councils of local municipalities to pass zoning by-laws for prohibiting the use of land or the erecting, locating or using of buildings or structures for or except for such purposes as may be set out in the by-law;

AND WHEREAS the Council of The Corporation of the Town of Caledon considers it desirable to pass a zoning by-law to permit the use of Part of the East Half of Lot 4, Concession 6 (Albion), Town of Caledon, Regional Municipality of Peel, for supermarket purposes.

NOW THEREFORE the Council of The Corporation of the Town of Caledon enacts that By-law 2006-50, as amended, being the Comprehensive Zoning By-law for the Town of Caledon, shall be and is hereby amended as follows:

1. The existing C-432 standards of Table 13.1 are hereby removed and replaced with the following:

Zone Prefix	Exception Number	Permitted Uses	Special Standards
C	432 (By-law 2007-53, OMB Order No 1400, By-law 2012-XXX)	<ul style="list-style-type: none"> - Art Gallery - Artist Studio and Gallery - Business Office - Clinic - Day Nursery - Drive-Through Service Facility - Dry Cleaning or Laundry Outlet - Financial Institution - Fitness Centre - Home Improvement Centre - Hotel - Laundromat - Merchandise Service Shop - Motel - Non-Food Store Retail - Outdoor Seasonal Garden Centre, Accessory - Personal Service Shop - Pharmacy - Place of Assembly - Place of Entertainment - Private Club - Restaurant - Sales, Service and Repair Shop 	<ul style="list-style-type: none"> Lot Area (minimum) 6.5ha Lot Frontage (minimum) 210m Building Area (maximum) 30% Yards (maximum) <ul style="list-style-type: none"> (a) front 12m (adjacent to Regional Road 50) (b) Exterior, Side (Adjacent to Healey Road) 9m (c) Rear 9m Building Height (maximum) <ul style="list-style-type: none"> (a) Hotel 18m (b) All Other Uses 12m Gross Floor Area – All Buildings (maximum) <ul style="list-style-type: none"> (a) before a building permit is issued for a Home Improvement Centre 9,290 m2 (b) upon a building permit being issued for a Home Improvement Centre 18,110 m2 Gross Floor Area – Home Improvement Centre: <ul style="list-style-type: none"> (a) minimum 7,430 m2 (b) maximum 11,150 m2 Gross Floor Area – All Non-Food Store Retail (maximum) 4,650 m2 Gross Floor Area – All Specialty Food Stores (maximum) 700 m2 Gross Floor Area – Size Restrictions <ul style="list-style-type: none"> (a) The minimum gross floor area for a Non-Food Store Retail establishment shall be 279 m2, except that for a maximum of 3 Non-Food Store Retail establishments, the minimum gross floor area may be 93 m2 each; (b) The maximum gross floor area for any Specialty Food Store shall be 299 m2.

Zone Prefix	Exception Number	Permitted Uses	Special Standards
		<ul style="list-style-type: none"> - Specialty Food Store - Supermarket - Training Facility - Video Outlet/Rental Store 	<p>(c) The maximum gross floor area for any Supermarket shall be 3716 m²</p> <p>Outdoor Seasonal Garden Centre, Accessory</p> <p>(a) Number of Outdoor Seasonal Garden Centres, Accessory per Lot which shall only be accessory to a Home Improvement Centre 1</p> <p>(b) Duration of Operation (maximum) 180 consecutive calendar days each calendar year – shall be consecutive days</p> <p>(c) Size (maximum) 929 m²</p> <p>(d) Parking – no part of an Outdoor Seasonal Garden Centre, Accessory shall encroach upon or block any more than 45 required parking spaces on the lot.</p> <p>Landscaping Area (minimum) 15%</p> <p>Planting Strip Locations/Width (minimum)</p> <p>(a) Adjacent to Regional Road 50 9m</p> <p>(b) Adjacent to Healey Road 6m</p> <p>(c) Adjacent to Rear Lot Line 6m</p> <p>(d) Adjacent to Interior Side Lot Line 2.5m</p> <p>Parking Spaces (minimum) 1 for each 21m² of Gross Floor Area or portion thereof</p> <p>Front Lot Line Exception</p> <p>Notwithstanding Section 3.2, within any C-432 Zone, the front lot line shall be deemed to be the lot line which abuts Regional Road 50.</p>

READ THREE TIMES AND FINALLY
PASSED IN OPEN COUNCIL
THIS 29TH DAY OF MAY, 2012.

Marolyn Morrison, Mayor

Karen Landry, Clerk