

ISSUE DATE:

MAR. 20, 2007

DECISION/ORDER NO:

0717



PL050493

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

SmartCentres has appealed to the Ontario Municipal Board under subsection 22(7) 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 the Official Plan for the City of Burlington to redesignate land at 2075 Fairview Street in order to add a "Large Retail Warehouse" designation use to Part III, Subsection 5.3.3b

505-09/02

O.M.B. File No. O050081

SmartCentres 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 2020 of the City of Burlington to rezone lands respecting 2075 Fairview Street to Mixed Use Retail (MXR) to permit the development of a Large Retail Warehouse

O.M.B. File No. Z050071

APPEARANCES:

Parties

SmartCentres

City of Burlington

Emshih Developments Inc. and
Halton Condominium Corporation No. 181

G. M. Buzza and Chaparral Developments Ltd.

Burlington Downtown Business Association

R. Forbes et al

Participants

Rambo Creek Ratepayers Association

Counsel*/Agent

D. Wood*
J. Myers*

Ira T. Kagan*
P. De Melo*
J. Zuidema*

J. Farber*

Roslyn Houser*

B. Dean

Robert Forbes

John Boich

**DECISION DELIVERED BY R. A. BECCAREA
AND PARTIAL ORDER OF THE BOARD**

This matter came before the Board for a hearing commencing Monday, October 16, 2006. On the consent of counsel for the appellant and the City of Burlington, the evidence was heard in two phases. Phase 1 dealt with planning and market (residential and office) evidence and Phase 2 dealt with traffic and transportation evidence. The Board also heard from members of the public on November 16th which day was reserved exclusively for them. The Christmas break separated the two phases.

At the commencement of Phase 2, counsel for the appellant and the City of Burlington, presented the Board with signed Minutes of Settlement on behalf of their clients. Those Minutes of Settlement are attached to this Decision/Partial Order. Mr. Brian Dean, on behalf of the Burlington Downtown Business Association, advised the Board that they supported the Minutes of Settlement and would not be continuing their case against the proposed development. The Board was also advised the Emily Tan-Shih and Emshih Developments Inc. had also settled with the appellant on the basis of the implantation of certain public and private traffic infrastructure improvements as described in Minutes of Settlement to be filed with the Board (the "Emshih Settlement").

Then, Phase 2 of the hearing addressing traffic and transportation evidence in regard to concerns of the Rambo Creek Ratepayers' Association and R. Forbes et al was completed.

The Decision and Order of the Board is as follows:

Official Plan Amendment

In regard to the SmartCentres appeal requesting a site specific Official Plan Amendment (O.M.B. File No. O050081), the Board Decision and Order is that the appeal is allowed in part and that Official Plan (1997) for the City of Burlington be amended as follows:

"That the lands on the north side of Fairview Street, east of Rambo Creek, known municipally as 2055, 2075 and 2085 Fairview Street, be redesignated from Mixed-Use Corridor (Retail Oriented) to Arterial Commercial with a new set of site specific provisions being applied as follows:

Add a new policy Part III, 4.5.2 g) as follows:

“Notwithstanding the other policies of this Plan, the lands on the north side of Fairview Street east of Rambo Creek (municipally known as 2055, 2075 and 2085 Fairview Street), shall be subject to the following:

Notwithstanding Part III, Policy 4.5.2 (a), Large Retail Warehouses are not permitted, medium and high density residential uses are permitted, and only those uses identified in 4.5.2 (a) that are transit supportive uses, as defined in the Growth Plan for the Greater Golden Horseshoe (2006), are permitted. For the avoidance of doubt, of the uses permitted by Part III, Policy 4.5.2 (a) (as amplified in this policy), offices and medium and high density residential uses are deemed to be transit-supportive uses.

Notwithstanding (i) above, a single-storey department store, not exceeding 12,000 square metres of gross floor area, is permitted, provided that no greater than 15% (1,800 square metres) of the gross floor area within the department store shall be used for the sale of food products.

and

Part III, Policy 4.5.2 (b) regarding *Form of Development* and Part III, Policy 4.5.2 (c) regarding Zoning Regulations do not apply.”

and

“That the lands on the north side of Fairview Street, west of Rambo Creek, known municipally as 915 Brant Street and 2030 De Paul’s Lane, be designated from *Mixed-Use Corridor (Retail Oriented)* to *Arterial Commercial* with a new set of site specific provisions being applied as follows:

Add a new policy Part III, 4.5.2 h) as follows:

“Notwithstanding the other policies of this Plan, the lands on the north side of Fairview Street west of Rambo Creek and east of Brant Street (municipally known as 915 Brant Street and 2030 De Paul’s Lane), shall be subject to the following:

- (i) Notwithstanding Part III, Policy 4.5.2 (a), Large Retail Warehouses are not permitted and medium and high density residential uses are permitted, and only those uses identified in 4.5.2 (a) that are transit supportive uses, as defined in the Growth Plan for the Greater Golden Horseshoe (2006), are permitted. For the avoidance of doubt, of the uses permitted by Part III, Policy 4.5.2 (a) (as amplified in this policy), offices and medium and high density residential uses are deemed to be transit-supportive uses. All permitted uses shall have a minimum floor area ratio of 0.5:1 and a minimum building height of 2 storeys.

and

- (ii) Part III, Policy 4.5.2 (b) regarding *Form of Development* and Part III, Policy 4.5.2 (c) regarding *Zoning Regulations* do not apply.”

This amendment is supported by the evidence adduced at the hearing and is in accordance with the principles of good planning.

Zoning By-law Amendment

In regards to the SmartCentres appeal requesting a site specific zoning by-law amendment (OMB File No. O050071), the Decision of the Board is to allow the appeal in part and that the Zoning By-law 2020 for the City of Burlington be amended as follows:

“That the lands on the north side of Fairview Street, west of Brant Street, on both the east and west side of Rambo Creek, known municipally as 2055, 2075 & 2085 Fairview Street Smart, 915 Brant Street and 2030 De Paul’s Lane be Zoned CA-TSA (*Arterial Commercial-Transit Station Area*) and O2 (*Open Space*) (under Zoning By-law 2020), as follows:

“THE CORPORATION OF THE CITY OF BURLINGTON
BY-LAW NUMBER _____

A by-law to amend By-law 2020, as amended,
north side of Fairview Street, east and west of Rambo Creek
(municipally known as 2055, 2075 & 2085 Fairview Street, 915 Brant Street and 2030 De Paul’s
Lane)
OMB File: Z050071

THE COUNCIL OF THE CORPORATION OF THE CITY OF BURLINGTON HEREBY
ENACTS AS FOLLOWS:

1. Zoning Map Numbers 14-W of PART 16 to By-law 2020, as amended, are hereby amended as shown on Schedule “A” attached to this by-law.
2. The lands designated as “A” on Schedule “A” attached hereto are hereby rezoned from MXR to CA-TSA (*Arterial Commercial-Transit Station Area*).
3. The lands designated as “B” on Schedule “A” attached hereto are hereby rezoned from MXR to O2.
4. PART 1, General Conditions and Provisions, Section 1.4, Zone Designations, Table 1.4.1 is hereby amended by adding the CA-TSA zone to the cell ‘Commercial Zones’.

5. PART 4, Commercial Zones, is amended by adding CA-TSA (Arterial Commercial-Transit Station Area) to the list of ZONE DESIGNATIONS and the Table of Contents.

6. PART 4, Table 4.2.2 is added immediately after Table 4.2.1 and Footnotes for Table 4.2.1, showing the list of uses permitted in an Arterial Commercial-Transit Station Area, identified with check mark (✓) and subject to footnotes.

The uses permitted in an Arterial Commercial-Transit Station Area shall be in accordance with Table 4.2.2 and related footnotes.

<i>Table 4.2.2 Permitted Uses</i>	<i>CA-TSA</i>
Retail Commercial	(a)
Supermarket	✓
Office Furniture & Equipment	✓
Computer Hardware & Software	✓
Convenience Store	✓
Home Improvement Products	✓
Sporting Goods, Photography Supplies & Hobby Shops	✓
Books, Music, Flowers & Gifts	✓
Food Store, Paper Products and Pharmacy	✓
Other Retail Stores	✓
Service Commercial	(a)
Standard Restaurant	✓
Fast Food Restaurant	✓
Convenience Restaurant	✓
Banks, Trust Companies and Credit Unions	✓
Dry Cleaning Depot, Laundromat, Laundry Service	✓
Veterinary Services	✓
Elevated Parking Facility as an accessory use to a permitted use but not permitted as a principle use or commercial parking lot.	✓
Other Service Commercial uses, not including Night Club and Funeral Home.	✓

Office	
All Office Uses	<i>J</i>
Hospitality	(a)
Caterer	<i>J</i>
Entertainment and Recreational	(a)
Recreational Establishment	<i>J</i>
Entertainment Establishment	<i>J</i>
Residential	
Apartment Building	<i>J</i>
Retirement Home	<i>J</i>
Dwelling Units in a commercial/office building	<i>J</i>
Stacked Townhouse (see Subsection 5)	<i>J</i>
Townhouse	<i>J</i>
Uses Not Restricted	(b)
Home Day Care	<i>J</i>
Day Care	<i>J</i>
Group Home	<i>J</i>
Emergency Shelter	<i>J</i>
Residential Social Services	<i>J</i>
Miscellaneous	<i>J</i>

Notwithstanding the uses permitted in Table 4.2.2, any use in a CA-TSA zone that existed legally at the time of passing of this by-law is deemed to conform to this by-law with respect to permitted uses.

7. PART 4 is amended by adding FOOTNOTES TO Table 4.2.2 immediately after Table 4.2.2, as follows:
 - (a) Maximum floor area per use: 500m²
 - (b) Notwithstanding Part 1, Section 2, Subsection 2.21 (Uses Permitted In All Zones), only the uses shown with a check mark on the chart in this by-law are permitted.

- 8. PART 4 is amended by adding Section 5.A, CA-TSA ZONE REGULATIONS (Arterial Commercial-Transit Station Area).
- 9. PART 4 is amended by adding Subsection 5.A.1, LOT WIDTH, AREA, YARDS.
- 10. PART 4 is amended by adding the following Table to Subsection 5.A.1:

Table 5.A.1

REGULATION	REQUIREMENT
Lot width	25 m
Lot area	1000 m ²
Yard abutting a street	3 m minimum, 4.5 m maximum
Side yard	No minimum
Rear yard	3 m
Building setback abutting a creek block	7.5 m
Yard abutting a pipeline easement	7 m rear, 3 m side
Yard abutting a railway right-of-way	None required
Separation Distance from a railway right-of-way	30 m for land uses sensitive to a railway right of way
Yard abutting a PC or P Zone	6 m
Minimum gross floor area	The gross floor area of each upper storey of a building containing more than one storey must be at least 50% of the gross floor area of the first storey.

- 11. PART 4 is amended by adding Subsection 5.A.2, MINIMUM FLOOR AREA RATIO AND RESIDENTIAL DENSITY:

Minimum Floor Area Ratio: 0.5:1
 Minimum Residential Density: 55 units/ha

Notwithstanding the regulations contained in Section 5.A.2, any building in a CA-TSA zone that existed legally at the time of passing of this by-law is deemed to conform to this by-law with respect to minimum floor area ratio.

12. PART 4 is amended by adding Subsection 5.A.3, LANDSCAPE AREA:

Landscape Area

Abutting a street: 3 m

Abutting a creek block or O3 zones: 3 m

Abutting a PC or P zone: 3 m

An outdoor patio may encroach into a required landscape area abutting a street.

13. PART 4 is amended by adding Subsection 5.A.4, BUILDING HEIGHT:

CA-TSA Zone: 2 storey minimum.

Notwithstanding the regulations contained in Section 5.A.4, any building in a CA-TSA zone that existed legally at the time of the passing of this by-law is deemed to conform to this by-law with respect to minimum building height.

14. PART 4 is amended by adding Subsection 5.A.5, PARKING:

Parking shall be provided as follows:

Parking shall be provided in accordance with Part 1, Subsection 2.25, "Off Street Parking and Loading Requirements" and Part 5, Subsection 4.6, except as amended by the following:

The minimum number of parking spaces required for non-residential uses is deemed to be the number generated by the standards outlined in Table 1.2.6, less a factor of 5%; and

For non-residential uses, parking shall not be provided in excess of the standards outlined in Table 1.2.6;

Visitor Parking:

Where a development is comprised of a mix of residential and non-residential uses, non-residential parking located on the same property as the residential use may be counted toward required visitor parking for the residential use, using the standards outlined in clause c) above;

Where the use is a mixed use development, the parking requirement may be calculated using percent of peak period use as given in the detailed table outlined below, using the standards outlined in clauses b) and c) above. For purposes of this subsection, "mixed use development" is defined as a development which contains any combination of office, retail service commercial, restaurant and/or overnight accommodation uses which shares parking on the same lot.

The initial step in determining the parking for a mixed use development is to calculate the parking requirement for each use contained within the development as if these uses were free-standing buildings. The parking requirement for each use is then multiplied by the percent of the peak period for each time period (e.g. noon) contained in the charts below. Each column is totalled for weekday and weekend. The maximum figure obtained from all time periods shall become the parking requirement for the specific mixed use development.

PERCENT OF PEAK PERIOD OCCUPANCY (Weekday)				
Type of Use	Morning	Noon	Afternoon	Evening
Office/Financial Institution	100	90	95	10
Retail/Service Commercial	80	90	90	90
Restaurant	20	100	30	100
PERCENT OF PEAK PERIOD OCCUPANCY (Weekend)				
Type of Use	Morning	Noon	Afternoon	Evening
Office/Financial Institution	10	10	10	10
Retail	80	100	100	70
Restaurant	20	100	50	100

15. PART 4 is amended by adding Subsection 5.A.6, DOORS:

For a CA-TSA zone, every building located within 60 metres of a street with a deemed width of 26 metres or greater shall provide a pedestrian accessible door on the building elevation facing the street.

16. PART 4 is amended by adding Subsection 5.A.7, STACKED TOWNHOUSE REGULATIONS.

17. PART 4 is amended by adding the following Table to Subsection 5.A.7:

Table 5.A.7

CA-TSA ZONE STACKED TOWNHOUSE REGULATIONS	REQUIREMENT
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Lot Width	25 m
Lot Area	1200 m ²
Front Yard / Street Side Yard	Footnote (a)
Side Yard	3 m
Rear Yard	6 m
Building setback abutting a creek block	7.5 m rear
Yard abutting a pipeline easement	7 m rear, 3 m side
Yard abutting a railway right-of-way	30 m
Density (minimum)	55 units / ha
Floor Area Ratio (minimum)	0.5:1
Maximum building height	4 storeys
Minimum number of stacked townhouse units per stacked townhouse building	12

Footnotes to Table 5.A.7

(a) Abutting a street having a deemed width less than 26 m:
 3 m, except that the entrance elevation for an attached or detached garage shall be setback 6 m from the street.

Abutting a street having a deemed width of 26 m or greater:
 3 m, except that the entrance elevation for an attached or detached garage shall be setback 6 m from the street and the maximum yard shall be 16 m for 60% of the length of the building abutting the street line.

18. PART 17, Definitions, is hereby amended by adding the following definitions:

Land Uses Sensitive to Railway Rights-of-way

Means buildings, amenity areas or outdoor spaces where humans may be adversely affected by the activities of a railway right-of-way. Land uses sensitive to railway rights-of-way shall include residences, schools, day care facilities, hospitals, public health care and social services facilities, retirement homes, long term care facilities, recreational and entertainment facilities, places of worship, monasteries, convents and places of assembly."

19. PART 15, +

20. EXCEPTIONS TO ZONE DESIGNATIONS is amended by adding the following exception under Subsection 15.3:
[CLERK TO ASSIGN APPLICABLE NUMBER]
ZONE CA-TSA

1. This exception applies to the lands on the north side of Fairview Street, east of Rambo Creek, municipally known as 2055, 2075 and 2085 Fairview Street, as shown on Schedule “A”.
2. Additional Permitted Use: Department Store
3. Regulations applicable to Department Store:
 - (i) The gross floor area of the Department Store may be up to, but shall not exceed, 12,000 square metres;
 - (ii) No greater than 15% (1,800 square metres) of the gross floor area of the Department Store shall be used for the sale of food products;
 - (iii) The floor area ratio of the Department Store may be less than 0.5:1;
 - (iv) No building setback abutting a creek block is required for the Department Store;
 - (v) No landscape area abutting a creek block or O2 zones is required for the Department Store;
 - (vi) The Department Store may be less than 2 storeys;
 - (vii) The Department Store may have up to, but no more than, 524 parking spaces. Individual parking areas for the Department Store shall contain a maximum of 190 parking spaces and shall be separated from adjoining parking areas by a 3 m landscape area. Where more than one parking area is required the average parking area size shall be 150 parking spaces. Connecting driveways may cross a landscape area; and
 - (viii) PART 4, Subsection 5.A.6, DOORS shall not apply to the Department Store.

Except as amended herein, all other provisions of this By-law, as amended, shall apply.”

This zoning amendment is supported by the evidence adduced at the hearing and is in accordance with the principles of good planning.

Upon the Board being notified by the City of Burlington that Wal-Mart has executed a Site Plan Agreement to secure the conditions listed in City of Burlington

Staff Report PL55/05 and that the requirements of the Emshih Settlement have been met, the Board will issue its Order in regard to the zoning amendment and the Clerk shall have the authority to assign a number to the By-law Amendment.

This panel of the Board remains seized of these matters and can be spoken to should the need arise.

So Orders the Board.

“R.A. Beccarea”

R.A. BECCAREA
MEMBER