

ISSUE DATE:

Mar. 21, 2006

DECISION/ORDER NO:

0859



PL051060

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

2057870 Ontario Inc. 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 to enact a proposed amendment to Zoning By-law 87-61 of the Town of Collingwood to rezone lands respecting 115 Sanford Fleming Drive from M1 to M1 – Special Exception Zone 6
OMB File No. Z050144

APPEARANCES:

Parties

Town of Collingwood

2057870 Ontario Inc.

Counsel

Leo F. Longo

Dennis H. Wood

DECISION DELIVERED BY J. FLINT AND ORDER OF THE BOARD

2057870 Ontario Inc. (the Company) owns a vacant 1.0-hectare industrial property at 115 Sanford Fleming Drive on the east side of the Town of Collingwood (the Town). Mr. Gordon O'Donnell, a principal of the Company, would like to develop the property with a two-storey, 2787.84-square metre office building. His application for a site-specific M1 exception zone to permit a stand-alone office building was refused by the Town and he appealed.

The subject property is located within an industrial area south and west of Highway 26, north of Poplar Sideroad and east of Raglan Street. The area contains a mix of large and small industries on lots that vary in size from 0.5 to over 10 hectares. Sanford Fleming Drive is an interior street running west from Sixth Line where the lots average approximately one hectare. The subject property is designated Industrial. The zone is Industrial M1 that permits accessory business and/or administrative offices but not freestanding office buildings.

Mr. Michael Goldberg, a planning consultant, testified in support of the application, as did Mr. Gordon O'Donnell and Mr. C.C. Tatham, an Engineer and owner of a consulting firm that expects to occupy the second floor of the proposed building.

Catherine Ann Spears, a planning consultant, testified on behalf of the Town in opposition.

At the beginning of the hearing, Mr. O'Donnell provided background information about his purchase of the property and his discussions with the Town about its possible development. To his knowledge, no mention was made of an Official Plan Amendment (OPA) until now. Mr. O'Donnell has obtained a building permit for the office building, and a site plan has been recommended for approval so long as the building is used for a call centre. A call centre is a form of office use permitted in all M1 zones. A local engineering firm that is looking for larger premises has shown interest in occupying half the building. No changes to its size or siting would be needed to accommodate the firm.

Mr. Tatham testified that over the past thirty-five years his consulting business has grown to 80 employees, fifty of whom work in Collingwood. Approximately twenty-five percent of them work outside as surveyors, construction consultants etc. The remainder are office employees. His long-term objective is to find an economical and suitable location for his business away from the downtown core commercial area. His current downtown office has inadequate storage space and is cramped and fragmented. It is also expensive and lacks parking. He finds there is no advantage to a downtown location because his company has no walk-in clients.

He has investigated potential M2 sites where freestanding offices are permitted but has been unable to find one that meets all the firm's needs. The advantages of the proposed location are that it is convenient and cohesive: all the offices and inside storage space would be on one floor, and there are adjacent parking and signage opportunities as well as reduced overhead. He feels that his company would be a compatible addition to the area.

The primary issue for the Town is to preserve the integrity of the industrial area and to maintain a vibrant core downtown commercial area. The Town's position is that the requested exception to the M1 zoning does not conform to Official Plan requirement that offices are permitted in industrial areas only if they are accessory to or supportive of the industrial users. Therefore, this application requires an OPA. An economic review of the impacts of higher order commercial uses in Collingwood industrial areas would be critical to any decision to allow commercial uses in industrial areas. This is a complex

issue yet to be studied or determined by the Town. The prospective tenant is better to search out an M2 area where freestanding offices are permitted. Meanwhile, it is important that this application be refused so that it does not become the “thin edge of the wedge” and trigger similar applications. If this happens the industrial area will become destabilized and its integrity will be jeopardized.

On the other hand, Mr. Goldberg’s evidence is that the Official Plan does not differentiate between light and general industrial uses because permission for offices is identical. Moreover, the consulting engineering firm that the M1 – exception zone will accommodate generally supports the industrial users in the area. It is also comparable in size to nearby industries and will be a welcomed and appropriate addition to the area. Section 4.5.1.1 of the Official Plan encourages the retention and growth of local businesses and refusing this application will not result in the firm remaining downtown.

Both planners agreed that the issue of Official Plan conformity hinges on the interpretation of two relevant sections. The first is section 4.5.3.3.2 that states, in part, that in light industrial areas, “uses accessory or supportive of the various permitted uses may be permitted, including commercial uses servicing the industrial area as a whole, such as eating establishments, business and professional offices”.

Accessory is defined in section 2.1 of the by-law (Exhibit 5, page 87), but since it clearly refers to accessory uses being in the same building/property as the main use, it is not applicable in this instance. However supportive is not qualified. While both planners agree that a supportive use can be freestanding like a restaurant, the Town maintains that it must demonstrate a direct positive link with nearby industries. For example, business offices in industrial areas are supportive if they are administrative centres within and serve manufacturing plants. It is too much of a stretch to consider standalone business offices supportive. Meanwhile, the applicant maintains that the consulting engineering firm is supportive of the industrial area in at least two ways: it contributes to its vitality and success by being located there and thriving; and most industries at one point or another need the services that civil and municipal engineers provide. Moreover, it is his opinion, that by including offices as accessory examples in section 4.5.3.2.2, the Official Plan deems them to be permitted outright.

The second area of conflicting interpretation regards the commercial goals and policies. Town quotes section 4.4.1.6 of the Official Plan that commercial facilities should be concentrated in the Downtown and the Western Commercial node; and section 4.4.2.3 that “new commercial development shall be scaled and timed to minimize risk to the historical Downtown and to serve anticipated market requirements.” However, the applicant maintained that references to commercial policies relate primarily to retail and the protection of downtown core businesses. In this instance, no retail uses are anticipated. The Official Plan does not speak to commercial in relation to industrial land except in section 4.5.2.13 “to encourage the diversification and expansion of the municipality’s existing industrial/commercial base”. That is the purpose of this application.

The Town maintains that the application does not conform to section 1.3 of the Provincial Policy Statement regarding the protection and preservation of employment areas. The applicant interprets this section to relate to undesired intrusion of residential uses into industrial lands. The Provincial Policy Statement encourages the development of industrial parks.

The Town maintained that there are significant differences between call centers that are permitted in M1 zones and encouraged by the Town, and a general business office. Call centers operate twenty-four hours a day and can create compatibility issues. They also need substantial floor area and parking. For these reasons they are better suited to industrial areas rather than downtown or other commercial areas. They do not support other industries in the area but can be considered complimentary to them.

However, Mr. Goldberg testified that many employees of the consulting firm work long hours, and the need for parking per employee matches or exceeds that of a call centre. He informed the Board that the Town recently amended the M1 zone to permit call centers. No OPA was required. In outward form there is no difference between a consulting firm and a call centre; and the firm provides services for local industries and businesses, whereas a call centre does not.

On the evidence provided, the Board is satisfied that a 1.0-hectare property on Sanford Fleming Drive is a suitable location for a two-storey 2787.84-square metre office building. There is available infrastructure and no evidence of conflict with other users. A site plan demonstrates that there is adequate parking. The Board finds that an M1-exception to permit a consulting engineering firm to occupy the building is desirable and appropriate. The outward appearance of the building remains unchanged, the use will not be more intensive than a call centre that by rights may also occupy the building. The additional and complimentary office use will contribute to the prosperity of the area with no negative impacts on adjoining industries.

The Board finds that an M1-exception for the subject property for the purposes requested conforms to the Official Plan. The Board prefers the evidence of Mr. Goldberg that civil and municipal engineering services generally support the work of many industrial users. The application also conforms to Official Plan objectives to encourage the expansion of local businesses. The Board notes that the evidence was that Collingwood lacks a prestige business park and noted that even though one of the objectives of the Official Plan, section 4.5.2.8 is to “encourage the development of new business parks”; there are no initiatives underway to establish one. The Board therefore finds that the proposed free standing office development will contribute to the well being of a section of an industrial area that has many attributes of a business park.

In summary, the Board finds that the requested M1-exception zone specific to the subject property is consistent with matters of Provincial Interest, and conforms to the policies of the Town of Collingwood Official Plan.

The Board, therefore, orders that the appeal against By-law 87-61 of the Town of Collingwood is allowed in part, and By-law 87-61 is amended as set out in Attachment 1 to this order. In all other respects the Board orders that the appeal is dismissed.

The Board so Orders.

“J. Flint”

J. FLINT
MEMBER

Attachment 1

1. That Schedule "C" of Zoning By-law No. 87-61 is hereby amended, as it pertains to those lands shown more particularly on Schedule "A" affixed hereto, by changing the zoning from the GENERAL INDUSTRIAL – M1 ZONE to the GENERAL INDUSTRIAL EXCEPTION SIX – M1-6 ZONE.
2. That Section 7.2 entitled EXCEPTION ZONES: INDUSTRIAL of zoning By-law No. 87-61 is hereby amended by adding thereto the following new paragraph entitled GENERAL INDUSTRIAL EXCEPTION SIX-M1-6 ZONE in proper sequence to read as follows:

GENERAL INDUSTRIAL EXCEPTION SIX-M1-6 ZONE

In the M1-X zone, the provisions of Section 7.1 Table 6, Column 2 shall apply subject to the exception that supportive Business, Professional and/or Administrative Office uses shall also be permitted as a principal use of the property.

Supportive for the purposes of this by-law shall mean a use that would, in the ordinary course of business, provide services directly to uses, or for the management, design and/or creation of the uses, which are permitted within industrial areas such as business or professional consulting service providing management, architectural, engineering, town planning, land surveying, industrial design and/or interior design services.

3. That Zoning By-law No. 87-61 is hereby amended to give effect to the foregoing, but Zoning By-law No. 87-61 shall in all other respects remain in full force and effect.