

February 22, 2013

Mayor and Council
City of Toronto
c/o City Clerk
Attn. Frances Pritchard
City Hall
100 Queen Street West
Toronto, ON
M5H2N2

Mr. Mayor and Members of Council:

**RE: CITY OF TORONTO DRAFT HARMONIZED ZONING BY-LAW
LAFARGE CANADA INC.
949 WILSON AVENUE
MHBC FILE: 9526FE**

We have been retained by Lafarge Canada Inc., tenant of lands located at 949 Wilson Avenue (“the site”), to review the City of Toronto’s Harmonized Zoning By-law. A portion of the site has continuously, since approximately the late 1950’s, been used for a concrete ready-mix plant and outdoor storage of raw and processed aggregate materials. This plant supplies the Toronto construction market with concrete.

A review of the draft Zoning By-law reveals that existing legally permitted uses are not recognized as legal conforming uses in the proposed Harmonized Zoning By-law, and Lafarge would like those uses to be re-instated as fully legal conforming uses.

City of North York Zoning By-law 7625

The site is currently zoned ‘Industrial Zone Two – M2(64)’ in the City of North York Zoning By-law 7625. While a concrete ready-mix plant is not expressly permitted by the M2 Zone, manufacturing uses are permitted if within a building. Manufacturing uses are defined as “the use of land, building or structure for processing, assembly, storage, packaging, production, growing or making of physical goods or commodities.” The concrete plant use is not otherwise defined or listed among the uses permitted in industrial zones. Based on this definition, it is our interpretation that a concrete ready-mix plant is a manufacturing use and is therefore permitted by the M2 Zone.

The M2 Zone prohibits a specific list of manufacturing uses, including asphalt plants, but does not explicitly prohibit a concrete plant.

A building is defined in the by-law in accordance with the Building Code Act. The Building Code Act defines a building as:

- “(a) a structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto,
- (b) a structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto,
- (c) plumbing not located in a structure,
 - (c.1) a sewage system, or
- (d) structures designated in the building code.”

It is our interpretation that a concrete plant is a building as defined under the Building Code Act and therefore, is currently a legal conforming use in the M2 zone.

Exception M2(64) of the North York by-law provides regulations for site-specific outdoor storage as follows:

Outside storage and operations are permitted if:

- o They are not conducted within any minimum yard setbacks; and
- o The outside storage or operations are kept within a fenced area, and the minimum height of the fence shall be 1.8 metres.

Based on the above, it is our interpretation that the concrete ready-mix plant and outdoor storage uses are permitted within the M2 Zone of the in-effect by-law.

City of Toronto Harmonized Zoning By-law

This site is proposed to be zoned Employment Industrial (E 1.0 (x 9)). The list of permitted uses in the E Zone specifically prohibits certain manufacturing uses, such as cement plants and concrete batching plants. Exception E9 allows for open storage provided it is accessory to a legally permitted manufacturing use. As concrete plants would not be permitted manufacturing uses, open storage would also not be permitted on this site.

As such, the proposed Harmonized Zoning By-law would remove the concrete ready-mix plant use permission and by extension, the open storage use permission. This would cause the existing legal conforming use to become legal non-conforming.

We note that the Teskey Concrete property, located just northeast of 949 Wilson Avenue, contains a concrete plant and outdoor storage, and enjoys similar permissions under the existing Zoning By-law. The existing uses on the Teskey site have been recognized as fully permitted uses in the Harmonized Zoning By-law. That site has been zoned Employment Light Industrial (EL 1.0 (x26)). While manufacturing uses of any kind are not listed under the EL Zone’s permitted uses section, the site specific provision EL 26 specifically permits a concrete batching plant as a permitted use. In addition, open storage is a permitted use within this zone. The City has made a specific effort in this case to recognize the existing use, as there was no site-specific provision for the use in the old Zoning By-law that would have been carried forward into the Harmonized Zoning By-law.

Letter from Staff, January 30, 2013

We had submitted earlier correspondence to the City's zoning staff on November 22nd 2012, requesting that the concrete plant use continue to be a fully legal conforming use. Staff responded in a letter dated January 20th, 2013, suggesting revised wording for Exception E(x9) in the Harmonized Zoning By-law. This revised wording would recognize the outdoor storage use as an independent use and provides site-specific standards for outdoor storage and outdoor operations. We support this revised wording and ask that it be included in the final draft of the Harmonized Zoning By-law.

However, staff in its January 20, 2013 letter does not suggest that a concrete plant be permitted on the site. The letter is silent on this matter. In subsequent discussions with zoning staff, they advised that they did not intend to recognize the existing concrete plant use on this site.

Conclusion

It is our interpretation that a concrete plant is permitted at 949 Wilson Avenue by the current Zoning By-law (By-law 7625). The proposed Harmonized Zoning By-law would explicitly prohibit the use. No justification has been provided to change an existing legal use to a legal non conforming use.

When a municipality determines that a use shall be legal non-conforming, the intent is that it cease to exist in the long term. Lafarge employs a number of people at this site and has no intention of ceasing operations which would lead to job losses. Further, Lafarge provides an essential commodity to meet construction and infrastructure needs of the City. It is unclear why the City would express an intent that the Lafarge business should cease to exist in the long term at this site, particularly when it is located within an Employment Area in close proximity to similar uses.

We respectfully request again that the City include a site-specific provision in the Harmonized Zoning By-law's Exception E(x9) provision that recognizes and permits, as a legal conforming use, the existing concrete plant.

Please feel free to call if you have any questions or concerns.

Thank you.

Yours truly,

MHBC



W. Brent Clarkson, MA, MCIP, RPP



Ryan Moore, M.PI, MCIP, RPP LEED® AP

cc: Chris McGuckin, Lafarge Canada