

March 5, 2013

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

Mr. Mayor and Members of Council:

**RE: DRAFT HARMONIZED ZONING BY-LAW
HOME DEPOT OF CANADA
OUR FILE 9316AU**

We are writing on behalf of our client, Home Depot of Canada (“Home Depot”), regarding their sites within the City of Toronto. Home Depot operates twelve stores in the City as well as owning an additional site that does not currently have a store on it.

The following table illustrates the zones in which the Home Depot sites have been placed within the Harmonized Zoning By-law:

Site Name	Address	Proposed Zoning
Caledonia	825 Caledonia Road	Excluded
Curity	7 Curity Avenue	Excluded
Dufferin/Steeles	2375 Steeles Ave W.	Excluded
Eglinton East	2911 Eglinton Avenue East	Commercial Residential (CR) 0.3 (c0.3;r0.0) SS3 (x604)
Etobicoke South	193 North Queen Street	Excluded
Gerrard Square	1000 Gerrard Street East	Commercial Residential (CR) 2.0 (c2.0;r0.0) SS2 (x1335)
Leaside	101 Wicksteed Avenue	Excluded
Morningside	60 Grand Marshall Drive	Excluded
Etobicoke North- Rexdale	1983 Kipling Avenue	Excluded
Scarborough Ellesmere	428 Ellesmere Road	Excluded
Stockyards	2121 St. Clair Avenue West	Excluded
Yorkdale	90 Billy Bishop Way	Excluded
York Mills	840-842 York Mills Road and 16 Lesmill Road	Excluded

We support the decision of the City's zoning team to exclude the majority of Home Depot's sites from the Harmonized Zoning By-law. We request that these eleven sites continue to be excluded through the adoption of the new by-law.

Eglinton East and Gerrard Square are proposed to be zoned in the Commercial Residential Zone, and are both subject to different building performance standards and site-specific exceptions. We have analyzed each site individually below.

Eglinton East

Based on our analysis, the Eglinton East site generally complies with the Harmonized Zoning By-law, with the exception of the following:

1. The cumulative area of outdoor sales and display exceeds 250 sq. m;
2. The area for outdoor sales and display occupies required parking areas on a seasonal basis; and
3. An insufficient landscape strip is provided in the front yard setback.

None of the exemptions in the CR Zone serve to recognize these legally established existing conditions.

Currently, the Home Depot store has an accessory garden centre. The garden centre is enclosed from April 1st to August 1st. The garden centre area is approximately 925 sq. m, of which 702 sq. m is enclosed in the spring and summer. The Harmonized Zoning By-law restricts outdoor sales and display to a maximum of 250 sq. m as a condition of the use, whereas the former Scarborough Zoning By-law 10048 does not restrict the size of this use. Therefore the outdoor uses that occur permanently and on a seasonal basis on this site will be rendered legal non-conforming.

We note that a Minor Variance to permit a reduction in parking on this site was approved in 2000. The purpose of the variance was to allow the seasonal use of the parking area for a garden centre. The Harmonized Zoning By-law will honour the parking reduction, but does not recognize the intent of the variance to accommodate the use of parking areas for a seasonal garden centre. The former Scarborough Zoning By-law did not restrict outdoor sales and display in the same way as the Harmonized Zoning By-law, so a Variance to specifically permit the use of parking spaces for outdoor sales and display was not required.

The Harmonized Zoning By-law requires a landscape strip for this site in Section 40.10.50.10(1), whereas former Scarborough Zoning By-law 10048 does not require any landscape strip except when abutting an S or T Zone in that by-law. The site does not abut an S or T Zone in that by-law. Therefore the existing building was built under zoning that did not require a landscape strip. As there is no exemption for existing buildings in the requirement of a landscape strip, the site will be rendered legal non-conforming in this regard.

We therefore request that site-specific exception CR 604 contain provisions to recognize existing outdoor sales and display areas greater than 250 sq. m, a seasonal garden centre that is allowed to occupy parking spaces, and that a landscape strip in the front yard is not required.

Gerrard Square

Based on our analysis, the Gerrard Square site generally complies with the Harmonized Zoning By-law, with the exception of the following:

1. The outdoor lumber yard is required to be set back 15.0 m from a lot in a residential zone; and
2. The cumulative area of outdoor sales and display exceeds 250 sq. m.

This store was constructed in 2004-2005, filling in vacant space in the Gerrard Square Mall. There is an outdoor sales and display area on the north side of the store, and a lumber storage area on the ground level of the parking structure on the east side of the mall. The lumber storage area is approximately 929 sq. m in area. There is also a 661 sq. m outdoor garden centre attached to the store. Therefore the total outdoor sales and display area is 1,590 sq. m. The current Zoning By-law for this site, being By-law 438-86, does not impose a maximum size for outdoor sales and display. Therefore the existing store and associated outdoor sales and display were constructed under zoning that did not limit outdoor sales and display. As there is no exception in the Harmonized Zoning By-law for existing outdoor sales and display area, these areas at the Gerrard Square store will be rendered legal non-conforming in this regard.

The location of the lumber yard was permitted under By-law 438-86. The Harmonized Zoning By-law has introduced a restriction for outdoor sales and display which is not found in the current Zoning By-law. There is no exemption for existing outdoor sales and display locations. Therefore the lumber yard will become legal non-conforming in this regard.

We request that site-specific exception CR 1335 contain provisions to recognize existing outdoor sales and display areas greater than 250 sq. m, and located within 15.0 m of a lot in a residential zone.

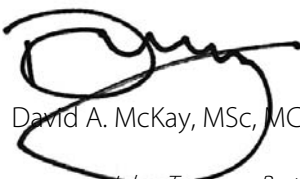
Conclusion

We respectfully request that City staff be directed to modify the Harmonized Zoning By-law prior to adoption to include the provisions discussed above.

We also request that the exclusion of the eleven Home Depot stores from the Harmonized Zoning By-law be maintained through the adoption of the by-law.

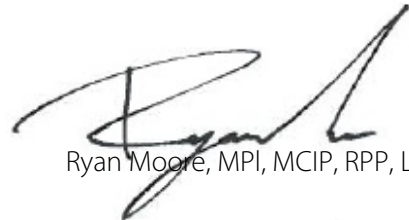
We would be happy to meet with City staff to discuss this matter. If you have any questions, please feel free to contact the undersigned.

Thank you,
MHBC



David A. McKay, MSc, MCIP, RPP

cc: *John Tascione, Brett Soloway, Steve Zakem*



Ryan Moore, MPI, MCIP, RPP, LEED® AP