

# PG21.1.229

Chair & Members  
Planning & Growth Management Committee  
City of Toronto, City Hall  
100 Queen Street West  
Toronto, Ontario M5H 2N2

5 March 2013  
12P16

Dear Committee Members,

**RE: City of Toronto Zoning By-law, (November 8, 2012)**  
**Properties: 1200 O'Connor Road & 5 Bermondsey Road ("Peak Freens Bakery"),**  
**40 Bertrand Avenue**  
**Owner: Mondelez Canada Inc.**

We are planning consultants to Mondelez Canada Inc. ("Mondelez Canada"). Throughout the process of preparing the new zoning bylaw, and since the repeal of By-law 1156-2010, Mondelez Canada has been engaged in constructive discussions with planning staff. These discussions have led to significant improvements in the draft bylaw.

Notwithstanding discussions to date with staff, issues remain with some of the performance standards and permitted uses which will apply in the Employment zone categories, which we believe will make implementation of the bylaw difficult, and adversely affect Mondelez Canada's ability to carry on operations, and expand their facilities. These issues are set out in the attachment to this letter.

We note that the bylaw will not apply to Mondelez Canada's operations at 370 Progress Avenue and 277 Gladstone Avenue. Our comments specifically address Mondelez plants at 1200 O'Connor Road & 5 Bermondsey Road (the "Peek Frean Bakery") and at 40 Bertrand Avenue.

## **Split Zoning of 1200 O'Connor / 5 Bermondsey Road (Peek Freens Bakery) Between Old & New Zoning Regimes**

---

The Mondelez plants at 1200 O'Connor Road & 5 Bermondsey Road (the "Peek Freens Bakery") will be partially zoned by the draft bylaw and partially covered by existing zoning. The uncertainty created by applying two separate and potentially incompatible zoning regimes to the same lot makes any determination of as-of-right permissions very

difficult and creates an unacceptable condition for Mondelez Canada. For clarity, the property should be re-zoned in its entirety by the new by-law or completely exempted.

#### **Clarification Regarding Permitted Manufacturing Uses**

---

The by-law defines “manufacturing use” as “...the use of premises for fabricating, processing, assembling, packaging, producing or making goods or commodities, and it includes repair of such goods or commodities.” This broad permission applies in E and EH zones. However, the by-law allows only a select range of specific (but not formally defined) manufacturing uses within EL and EO zones (including “Apparel and Textile Manufacturing”, “Food Manufacturing”, “Metal Products Manufacturing”, etc.). An accepted principle in municipal law is that if a use is listed as a permitted in one zone but not in another, then it is not permitted in the zone where it is not listed. Therefore, despite the general definition of “manufacturing uses”, by listing very specific manufacturing uses in EL and EO zones these uses may not be permitted in E and EH zones.

In our view the By-law should be clarified to ensure that the broader manufacturing permission in E and EH zones includes the specific manufacturing permissions listed in EL and EO zones.

**We ask that the Committee direct staff to meet further with Mondelez Canada prior to Council adoption to address the issues described herein, and in the attachment to this letter.**

Thank you for the opportunity to submit our comments.

Yours very truly,



Paul E. Johnston, MCIP RPP  
**Johnston Litavski**

Cc: Susannah Riggs – Mondelez Canada Inc.  
Cheryl Gordon – Mondelez Canada Inc.  
Bob Johnson.

Johnston Litavski Ltd.  
185 Carlton Street  
Toronto, ON M5A 2K7  
P: 416-323-1444  
F: 416-323-0388

[www.planners.to](http://www.planners.to)

## **Attachment to Mondelez letter March 5, 2013 - Implementation Issues to be Resolved**

---

### ***Gross Floor Area Definition for Non-Residential Uses***

The by-law defines and applies different definitions for gross floor area (“GFA”) for employment industrial uses. One definition is provided for calculating density, parking and loading requirements for most employment industrial uses, but a different definition is provided for calculating parking and loading requirements for manufacturing uses.<sup>1</sup> For greater clarity, we suggest a single definition for calculating GFA for all employment industrial uses be provided for all purposes.

### ***Front, Side & Rear Yard/Lot Line Definitions***

The By-law’s definition of a front lot line<sup>2</sup> creates confusion by allowing a lot to have multiple front yards and potentially no side and/or rear yards depending on the lot’s shape and the number and extent of street frontages. Further confusion arises for corner and through lots by allowing any street related lot line to be `designated` as the front lot line without providing any direction regarding when, how, by who or even if such a selection should be made<sup>3</sup>. This makes it impossible to determine many important performance standards.

### ***Open Storage***

In EL and E zones, the proposed by-law would limit Open Storage to lots where it will be in combination with a permitted manufacturing use. In an EO zone, it would be permitted on lots in combination with any permitted use.<sup>4</sup> This is contradictory for uses within EL and E zones as other permitted uses (i.e. - warehousing and wholesaling uses) often require open storage. Open storage should be permitted in combination with any permitted use in EL and E zones, as proposed in EO zones.

Also, the by-law appears to have categorized the storage of vehicles into three different uses, depending on the nature of that storage. Temporary parking/storage of tractor-trailers in conjunction with an Employment-Industrial use could be

---

<sup>1</sup> Sections 60.5.40.40(1), 60.5.80.1(1) and 60.5.90.1(1)

<sup>2</sup> Section 800.50(275)

<sup>3</sup> Section 5.10.20.30

<sup>4</sup> Sections 60.10.20.100(12), 60.20.20.100(12) and 60.40.20.100(13)

considered a Vehicle Depot rather than an Open Storage use.<sup>5</sup> Such an activity is critical to many employment-industrial uses, but Vehicle Depots are only permitted in EH zones, and conditionally in E zones. The by-law should be clarified so that vehicle/trailer storage would be permitted through the Open Storage permission, and allowed in any Employment-Industrial zone category.

### ***Vehicle Depots***

Alternatively, if it is determined that the temporary storage of trailers in conjunction with an employment-industrial use is considered a Vehicle Depot, Vehicle Depots should be permitted in the EL, E and E zones in combination with any permitted use.

Also, the by-law would require that Vehicle Depots in an E zone be setback at least 70m from any lot in a Residential or Residential Apartment Zone category.<sup>6</sup> No rationale is provided for the 70m setback. Trailer storage is common in Employment-Industrial areas, and it is not unusual for such storage to be within 70m of a residential zone. There is no similar requirement for new residential development on adjacent lands to be setback a similar distance.

### ***Cogeneration Energy & Renewable Energy Uses***

Cogeneration Energy and Renewable Energy Uses are permitted in each Employment-Industrial Zone category subject to conditions.<sup>7</sup> The wording of the conditions has been inconsistently altered in each zone category, whereas before it was identical. Clarification is needed.

Furthermore, Section 5.10.75.1 seems to state that the by-law will not apply to any Renewable Energy use despite proposing several regulations thereof. Clarification is needed.

### ***Restrictions on Roof-Top Equipment and Structures in Employment Industrial Zones***

The draft By-law imposes new standards regarding the height, amount and location of roof-top equipment for uses within all employment zones.<sup>8</sup> These new standards

---

<sup>5</sup> Sections 60.20.20.20, 60.20.20.100(6), 60.30.20.10, 800.50(520), 800.50(625), 800.50(890)

<sup>6</sup> Section 60.20.20.100(6)

<sup>7</sup> Section 60.10.20.100(17), 60.20.20.100(26), 60.30.20.100(10), 60.40.20.100(24)

<sup>8</sup> Sections 60.5.10.40(3), 60.5.10.40(4), 60.5.10.40(5) and 60.5.10.40(6)

place an onerous burden on industrial uses that often require the flexibility to install rooftop equipment to reflect changing industrial needs and processes.

### ***Parking Access & Location***

The by-law proposes a variety of new requirements regarding access to parking and its location. These include restrictions on the amount and layout of parking within front and street yards, restrictions regarding driveway and drive aisle widths, and new setbacks for parking spaces from a lot line.<sup>9</sup> An exemption is provided for legally existing parking spaces in front and side yards but no exemption is offered for existing driveway or drive-aisle widths.

Most of these provisions do not apply to most industrial uses today and if enacted would render a large number of existing industrial properties non-conforming. Also, they tend to be land intensive and are only appropriate in the most suburban settings.

### ***Landscaping***

The proposed by-law would require a 3m strip of soft landscaping along the entire length of any lot line in an EL, E and EO Zone that abuts a street.<sup>10</sup> Few existing employment industrial uses meet this requirement today and many would find it difficult to provide given their context and confined nature. There is no exemption for legally existing conditions.

### ***Location and Access to a Loading Space***

The by-law states that a loading space may not be in a front yard, side yard facing a street, or any yard abutting a lot in a Residential or Residential Apartment Zone (although loading may be provided in any yard in an EH Zone). The by-law also prohibits access to internal loading spaces through a building's main wall on lots in an EL, E and EO zone.<sup>11</sup> Considering the uncertainty regarding the by-law's definition of yards and lot lines, many existing employment industrial lots do not comply. Also, if loading is provided internally, there would be no harm in allowing access through the main front wall if that is what works best for the lot.

---

<sup>9</sup> Sections 60.5.80.10, 60.5.100.1, 60.10.80.20, 60.20.80.20 & 60.40.80.20 and 200.5.1(3)

<sup>10</sup> Sections 60.10.50.10, 60.20.50.10 and 60.40.50.10

<sup>11</sup> Sections 60.10.90.10, 60.20.90.10, 60.30.90.10 and 60.40.90.10, 60.10.90.40(2), 60.20.90.40(2), 60.40.90.40(2)

Also, within EL, E and EO zones, the proposed by-law states that (a) if a lot abuts a lane, access to loading must be from that lane; (b) if a corner lot does not abut a lane and has at least one lot line that abuts a street not identified as a “major street” by the By-law, access to the loading space must be from the non-major street, and (c) if neither condition exists, then access to the loading space can be from whatever street the lot fronts onto.<sup>12</sup> Many existing employment industrial lots do not meet this standard today, nor can they in the future. Exemptions are provided from some of these new standards; however any future loading changes must comply.

---

<sup>12</sup> Sections 60.10.90.40(1), 60.20.90.40(1), 60.30.90.40(1),