



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number 174-91

To amend By-law 139-84, as amended,
(part of Lot 15, Concession 1, E.H.S.,
geographic Township of Toronto)

The council of The Corporation of the City of Brampton ENACTS
as follows:

1. By-law 139-84, as amended, is hereby further amended:

- (1) by deleting therefrom, Schedule C - Section 628;
- (2) by deleting from Section 3.2 thereof, as a plan included in Schedule C, the following:

"Schedule C - Section 628"

- (3) by deleting section 628 therefrom, and substituting therefor, the following:

"628 The lands designated C1-SECTION 628 on Sheet 7
of Schedule A to this by-law:

628.1 shall only be used for the following purposes:

- (a) a retail establishment having no outside storage, but not including a beer, liquor or wine store, retail establishments selling goods that appeal to erotic tastes, a record store or a novelty store;
- (b) a convenience store, or a variety store;
- (c) a bank, trust company, or financial institution;
- (d) an office;
- (e) a personal service shop excluding a hairdressing salon and a barber shop;
- (f) a service shop;
- (g) a laundromat;
- (h) a dining room restaurant or a standard restaurant, and

- (i) purposes accessory to the other permitted purposes.

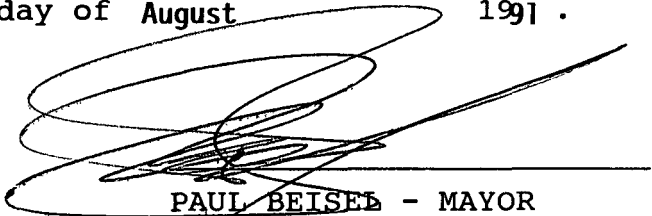
628.2 shall be subject to the following requirements and restrictions:

- (a) minimum lot area: 0.56 hectares;
- (b) minimum lot width: 88.0 metres;
- (c) minimum lot depth: 62.0 metres;
- (d) minimum rear yard depth: 5.5 metres;
- (e) minimum interior side yard: 9.0 metres;
- (f) maximum building height: one storey;
- (g) maximum gross commercial floor area: 1,219.0 square metres;
- (h) video or amusement arcades, pool and billiard halls, and bowling alleys shall not be permitted;
- (i) the total gross commercial floor area to be devoted to restaurant uses and medical office uses shall not exceed 122.0 square metres;
- (j) video games and amusement devices shall not be permitted within a variety store;
- (k) an adult entertainment parlour shall not be permitted;
- (l) food related refuse storage and restaurant refuse storage shall be located within a climate controlled area within a building;
- (m) a landscaped open space area, not less than 7.5 metres wide, shall be provided and maintained along the Kennedy Road South frontage, exclusive of the driveway location, and along the hypotenuse of the daylight triangle located at the intersection of Steeles Avenue East and Kennedy Road South;

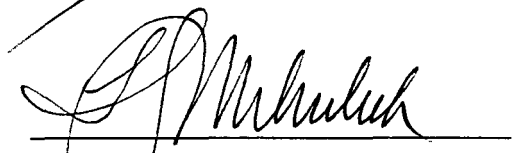
- (n) a landscaped open space area, not less than 9.0 metres wide, shall be provided and maintained along the Steeles Avenue East flankage, exclusive of the driveway location.
- (o) garbage and refuse storage facilities, including any storage of recyclable materials, shall be enclosed and roofed and located within a building, and
- (p) a solid masonry wall having a minimum height of 1.8 metres shall be provided and maintained along the west and south site limits where abutting a residential zone.

628.3 shall also be subject to the requirements and restrictions relating to the C1 zone and all the general provisions of this by-law which are not in conflict with the ones set out in section 628.1.2."

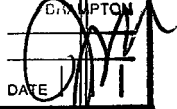
READ a FIRST, SECOND and THIRD TIME, and PASSED, in OPEN COUNCIL, this 19th day of August 1991 .



PAUL BEISE - MAYOR



LEONARD J. MIKULICH - CITY CLERK

APPROVED AS TO FORM LAW DEPT. BRAMPTON

DATE

28/91

DB#	96	FOLIO#	282
ORDER ISSUE DATE			
MAY 05 1993			
OB#	1993-3	FOLIO#	289



R 910554

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF Section 34(18) of
the Planning Act, 1983

AND IN THE MATTER OF an appeal by
Ledenhall Group Holdings Limited,
carried on by 1003254 Ontario
Limited, against Zoning By-law 174-
91 of the City of Brampton

C O U N S E L :

Heather Picken	- for	Ledenhall Group Holdings Limited
Clay Connor	- for	City of Brampton
R. K. Webb, Q.C.	- for	Westlodge Holdings Inc.

DECISION delivered by E. F. CROSSLAND and ORDER OF THE BOARD

On September 16, 1991 Ledenhall Group Holdings Limited, the owners at the time, of Village Plaza Shopping Centre located at the north-west corner of Steeles Avenue and Kennedy Road in the City of Brampton, appealed Zoning By-law 174-91 which was passed on August 19, 1991.

By-law 174-91 was a site specific by-law dealing with the lands directly across the street from the Village Plaza on the south west corner of Steeles Avenue and Kennedy Road, owned by Westlodge Holdings Inc.

Their objection to By-law 174-91 is spawned by the belief that By-law 139-84 was previously amended five years ago by By-law 220-86. By-law 220-86 was enacted after city council adopted reports from its Planning Committee and Planning and Development Department which recommended that a standard restaurant and variety stores should not be permitted to operate at the subject property. The by-law expressly prohibited the use of the lands for a variety store, and

it excluded the use for a standard restaurant. The by-law was subsequently appealed to the Ontario Municipal Board where it was reviewed and certain aspects of the by-law were amended by the Board. However, the by-law prohibitions against the use of the lands for variety stores and standard restaurants remained unchanged.

They believe that in enacting the new zoning by-law City Council has attempted to override the earlier decision of the Ontario Municipal Board which approved By-law 220-86, as amended. In so doing, City council has allowed the owner of the subject property to do what it was not allowed to do when its proposed rezoning was originally reviewed by the Board.

Ledenhall Group Holdings Limited subsequently sold the Village Plaza Shopping Centre to Helmsbridge Holdings Limited who in turn sold the property to 1003254 Ontario Limited on December 8, 1992. As a result, since 1003254 Ontario Limited had a greater interest in the appeal against Zoning By-law 174-91 than either Ledenhall Group Holdings Limited or Helmsbridge Holdings Ltd., the latter two companies consented and agreed to the appeal being assumed by 1003254 Ontario Limited. This transfer of the interest in the appeal came to the Board's attention by way of a letter received from Ledenhall Group Holdings Limited and Helmsbridge Holdings Ltd. dated February 19, 1993.

At the commencement of the hearing counsel for the applicant advised the Board that depending on the evidence called he may or may not call any witnesses and may rely on the city to present the case. He may however, wish to cross-examine the witnesses that appear on behalf of the appellant.

He very briefly advised the Board that in the Official Plan, Schedule "A" indicates the subject property is designated "Commercial". In Schedule "F" it is designated "Convenience Commercial". In the Fletchers Creek South Secondary Plan that

applies to the subject area it is also designated as "Convenience Commercial" and finally , the site specific By-law 139-84 as amended, designates the site "Commercial One - Section 628 (C1-Sec 628)".

He went on to say the issues are not complicated in that at the present time the zoning by-law allows among other uses a convenience store and a dining room restaurant. By-law 174-91, if allowed to stand, would result in a very minor increase in the flexibility of the site, in that it would add in addition to the existing uses, a variety store and a standard restaurant. The owner then would have a choice of either a variety store or a convenience store and either a dining room restaurant or a standard restaurant.

Mr. Michael Gagnon the Planner for the appellants advised the Board that his clients own the Village Plaza in the northwest corner of Steeles Avenue East and Kennedy Road South.

On Schedule A to the Official Plan the Village Plaza site is designated as Commercial. On Schedule D which identifies new development areas, the Village Plaza site is not identified as such, but rather is identified as part of the existing fabric of the area. In Schedule F which identifies and designates commercial sites the Village Plaza site is designated as convenience commercial.

Schedule H identifies the major transportation elements and major road networks. The Village Plaza site fronts on Steeles Avenue East which is a major arterial road while Kennedy Road on the east side of the Village Plaza is a minor arterial road.

Schedule I identifies the various road widths. Steeles Avenue East being a major arterial road has a right-of-way of 36 metres or 120 feet while Kennedy Road being a minor arterial road has a right-of-way of 30 metres or 100 feet.

Schedule K which identifies the Secondary Plan areas indicates the Village Plaza site is in Secondary Plan Area 17 and Section 4.5 states that the neighbourhood commercial uses will be permitted on the sites designated for the purpose. Except for a single location, these uses already exist. Section 4.5 goes on to say that the proposed neighbourhood commercial area located on the north-west corner of the intersection of Kennedy Road South and Steeles Avenue will serve the day to day needs of the surrounding residents. It will consist primarily of convenience food stores but may include two or three other small shops.

The Village Plaza site is zoned in By-law 200-82 as C1-Section 134.

Section 134 states lands designated C1-Section 134 on Schedule A to this by-law shall only be used for the purposes permitted in the C1 zone by Section 21.1.1.

Section 21.1.1 identifies those uses as

(a) Commercial

- (1) a retail establishment having no outside storage
- (2) a grocery store
- (3) a service shop
- (4) a personal service shop
- (5) a bank, trust company or finance company
- (6) an office
- (7) a dry cleaning and laundry distribution station
- (8) a laundromat
- (9) a parking lot, and
- (10) a dining room restaurant, a mixed service restaurant, a takeout restaurant.

The planner continued by stating that the lands that are the subject of this appeal owned by Westlodge Holdings Inc. and located across the street in the south west corner of Steeles Avenue and Kennedy Road compare to the Village Plaza as follows.

	<u>Village Plaza</u>	<u>Westlodge Holdings Inc.</u>
Area	.357 hectares/.882 acres	.568 hectares/1.04 acres
G.F.A. of Building	956.37m ² or 10,294 ft ²	Proposed: 1,219 m ² or 13,121 ft ²
Coverage	26.98%	21.5%
% Landscaped Open Space	14.94%	42.5%
Paved Area	58.08%	36%
Parking	41 spaces	53 spaces

In the Official Plan Schedule A, the Westlodge Holdings Inc. lands were designated Commercial as were the Village Plaza lands. However, in Schedule D it was identified as a new development area. In Schedule F it was not identified as either commercial or convenience commercial, finally Schedule K identified it as being in Secondary Planning Area '24'.

As a result of the appeals by Peel Condominium Corporation #19, Ledenhall Properties and the Peel Board of Education against By-law 220-87, in March 1987, the Ontario Municipal Board held a hearing and dismissed the appeals against By-law 220-86, a site specific by-law amending By-law 139-84 by changing the zoning designation from Agriculture "A" to Commercial One - Section 628(c) on the Westlodge site.

In Section 628-1 it states the land shall only be used for the following purposes:

- (1) a retail establishment having no outside storage
- (2) a convenience store
- (3) a bank, trust company or financial institution
- (4) an office

- (5) a personal service shop excluding a hairdressing salon or barber shop
- (6) a service shop
- (7) a laundromat
- (8) a dining room restaurant, and
- (9) purposes accessory to the other permitted uses.

In 628.2 (4) the minimum front yard setback was established as 22.0 metres

(7) minimum exterior side yard setback was established at 32.0 metres.

Both of these requirements are absent in By-law 174-91 which is currently before the Board. In addition, 628.2(9) established the gross commercial floor area at 1,219 square metres.

By-law 220-86 excluded hairdressing salons and barber shops from the personal service shops as well as dry cleaning and laundry distribution. In Section 628-2(10) it also excluded video or amusement arcades, pool and billiard halls and bowling alleys.

Finally, it defined 'Retail Establishment' as a building or place where goods or materials are sold or kept for sale to the general public but shall not include: beer, liquor or wine stores; retail establishments selling goods that appeal to erotic tastes; a record store, novelty store or variety store.

'Variety Store' shall mean a retail establishment engaged in the business of selling food and convenience goods to the general public which may include the sale of prepared food without seating for the consumption of food on the premises and having a gross commercial floor area of less than 300 square metres.

The planner then submitted By-law 174-91 as Exhibit 19 indicating that really the basic difference between this by-law

before the Board and By-law 220-86 which amended By-law 139-84 is that in Section 628.1 of By-law 174-91 it

- (b) has been changed to 'a convenience store' or 'a variety store'
- (h) has been changed to 'a dining room restaurant' or 'a standard restaurant'.

In addition, in Section 628.2 the following restrictions are found:

- (h) video or amusement arcades, pool and billiard halls, and bowling alleys shall not be permitted.
- (i) the total gross commercial area to be devoted to restaurant uses and medical office uses shall not exceed 122.0 square metres.
- (j) video games and amusement devises shall not be permitted within a variety store
- (k) an adult entertainment parlour shall not be permitted

and the definition of a Retail Establishment and a variety store have been excluded as have the setbacks from minimum front yard and minimum exterior side yard, which were all found in By-law 220-86.

He submitted as Exhibit 23 a historical chronology of the Westlodge Holdings Inc. lands going back to 1984 and referred to a letter found at Tab 5 of Exhibit 24, dated November 8, 1985 in which the City Planning Department stated that the proposed Westlodge convenience commercial site is within $\frac{1}{2}$ mile of three existing convenience commercial facilities (Village Plaza on the opposite side of Steeles Avenue, Peel Village Square Plaza at Rambler Drive and Kennedy Road, and a development at Rutherford Road and Steeles Avenue). In addition a number of other commercial and retail sites are located within a mile of the proposed site. This leads one to believe that the proposed convenience commercial use is not needed to serve the area.

He submitted Exhibit 25, a map of existing commercial facilities in the area, done on February 27, 1993 and an on-site inspection indicates that all the same facilities that were there in 1985 are still there today with the exception that today some of the tenants have changed. He does not believe a market study has been done since the Planning Department's recommendation was made on November 8, 1985 that would indicate a change is warranted.

He reviewed the policy's definitions and interpretation of the words 'Commercial' and 'Convenience Commercial' of the Official Plan submitted as Exhibit 9 especially Section 2.2.3.23(ii) of the Interpretation Section which states:

"The commercial centre proposal does not detrimentally encroach upon the primary trade area of an existing, viable competing centre."

He drew the Board's attention to Section 2.2.3.24 entitled "Shopping Centre Impact Studies", which states:

"Every application for the development of a Regional, District or Neighbourhood Commercial area shall contain supporting information indicating the economic, physical and transportation impact of the proposed development. The impact studies must provide information regarding the market feasibility of the proposed centre and whether or not it affects the viability of any existing nearby centres. All such studies shall be reviewed by the City and used as a basis for approval or refusal of a particular application."

He submitted Exhibit 26, the schedule from the January 14, 1986 Planning Development Staff Report with regard to Westlodge Holdings Inc. application to amend the Official Plan and zoning by-law to permit a convenience commercial facility on the subject lands. Admittedly this application dealt with a larger site (2.4 acres) than is proposed today, it had no access on to Steeles Avenue and there was insufficient frontage to accommodate the proposed convenience commercial centre. The Planning and Development department concluded that the proposed convenience commercial facility was otherwise inappropriate from a land use, market and transportation planning perspective and recommended that the application be refused.

After a number of public meetings and referrals to the Planning Department as to recommended exclusions, By-law 220-86 was passed by Council and those exclusions are still in effect today, including video arcade and uses likely to encourage young people to loiter, standard restaurant and variety store uses.

In his opinion a convenience store is more similar to a supermarket than a variety store in that By-law 139-84 defines it as

"a retail establishment engaged in the business of selling groceries, meat, fruit and vegetables to the general public and occupying premises having a gross commercial floor area of less than 600 square metres."

The same by-law defines supermarket with exactly the same wording except it adds "at least 600 square metres". On the other hand, By-law 220-86 to amend By-law 139-84 defines variety store as

"a retail establishment engaged in the business of selling food and convenience goods to the general public which may include the sale of prepared food without seating for the consumption of food on the premises and having a gross commercial floor area of less than 300 square metres."

He is also of the opinion that a dining room restaurant is different to a standard restaurant in that in a dining room restaurant, food and drink are consumed at the same table or counter within the restaurant where it is ordered, while in a standard restaurant, food and drink are prepared, offered for sale, and served to the public primarily for consumption within the same building or place but shall not include a fast food restaurant. He believes the word "primarily" means it could be "take out" and therefore Dining Room Restaurants and Standard Restaurants are different.

Subsequent to the Ontario Municipal Board approving Zoning By-law 220-86 in March 1987, Westlodge Holdings Inc. and Ledenhall Properties on December 1987 registered an agreement on the Westlodge lands, whereby "if any of the prohibited uses in Paragraph 1, namely:

- (d) a beer, liquor or wine store
- (e) a retail establishment selling goods that appeal to erotic tastes
- (f) a record store
- (g) a novelty store
- (h) a variety store

should become a permitted use under the applicable zoning by-laws of the City of Brampton as a result of an amendment to the said by-law or relief otherwise obtained, the restriction contained in this agreement prohibiting such use shall be terminated."

It was further agreed that Ledenhall shall have the right to object to an amendment or application for relief, but shall not use the agreement or the covenants herein contained as a bar to such amendment or application.

On June 11, 1990 Westlodge Holdings Inc. made an application A99/90 for a minor variance from By-law 139-84 Schedule C - Section 628 to allow a change of use from dining room restaurant to standard restaurant and to add a variety store.

On July 17, 1990 the Committee of Adjustment approved the minor variance and on August 1, 1990 Ledenhall Group Holdings Limited filed a notice of appeal. An Ontario Municipal Board hearing on the appeal of the Committee of Adjustment decision was scheduled for May 2, 1991. The hearing set for May 2, 1991, was adjourned at the request of Westlodge Holdings Inc. and on April 4, 1991, Westlodge Holdings Inc. made an application for an amendment to Zoning By-law 139-84. On August 19, 1991 By-law 174-91 was passed by Brampton City Council amending Zoning By-law 139-84. On September 16, 1991 Ledenhall Group Holdings Limited appealed By-law 174-91 to this Board.

On February 14, 1992 the Ontario Municipal Board dismissed the Committee of Adjustment application as the application had been

withdrawn. On December 8, 1992 Ledenhall Group Holdings Limited sold the Village Plaza Shopping Centre to Helmsbridge Holdings Ltd., who in turn sold it to 1003254 Ontario Limited. Finally, on February 5, 1993, Helmsbridge Holdings Ltd. advised 1003254 Ontario Limited of the Ontario Municipal Board hearing scheduled for March 2, 1993.

The planner stated that the Committee of Adjustment application was for a minor variance to change Dining Room Restaurant to Standard Restaurant and to add a variety store. The minor variance application was approved by the Committee of Adjustment but was objected to by Ledenhall Group Holdings Limited and was not supported by the Planning Staff.

This was the reason the application was withdrawn and an application for an amendment to Zoning By-law 139-84 was made by Westlodge Holdings Inc.

As a result of Westlodge Holdings Inc. application for a zoning by-law amendment to their property on April 4, 1991, the Planning and Development Department filed a staff report on May 14, 1991 in which they stated:

"If the proposal is approved it would permit the applicant a broader range of permitted land uses on the property located at the southwesterly corner of Steeles Avenue East and Kennedy Road South. The applicant proposes to add a variety store and a standard restaurant to the list of permitted uses."

The staff noted that the uses proposed and the restrictions proposed on said uses will not compromise Council's original requirement to limit the permitted commercial uses on the site dating back to 1986, to those that do not encourage young people to loiter. The proposed uses are very similar to those uses which are currently permitted on the site and with the appropriate restrictions can be supported from a planning perspective.

Concerning the variety store, staff noted that By-law 220-86 currently permits a comparable land use, namely a Convenience Store. The zoning by-law defines a convenience store as follows:

"Convenience Store shall mean a retail establishment engaged in the business of selling groceries, meat, fruit and vegetables to the general public and occupying premises having a gross commercial floor area of less than 600 square metres."

In comparison the By-law defines a variety store as follows:

"Variety Store shall mean a retail establishment engaged in the business of selling food and convenience goods to the general public which may include the sale of prepared food without seating for the consumption of food on the premises and having a gross commercial floor area of less than 300 square metres."

In staff's opinion the definition of Convenience store and a variety store are very similar with the exception of the wording "the sale of prepared food without seating for the consumption of food on the premises" which is permitted in a variety store, and with the exception of the amount of gross floor area to be devoted to each use. In view of this, staff believe there is little planning rationale for not permitting a variety store on the subject lands.

In addition, staff are also of the opinion that City Council's original requirement to limit permitted uses on the site to those which do not encourage young people to loiter will not be compromised.

Concerning the requested standard restaurant use the Planning staff noted that a dining room restaurant is presently permitted on this property. The definitions for a dining room restaurant and a standard restaurant are as follows:

"Restaurant, Dining Room shall mean a building or place where food and drink are prepared and offered for sale to the public, to be served by a restaurant employee at the same table or counter where the food and drink were ordered and are to be consumed, and where take-out food services are not available."

"Restaurant, Standard shall mean a building or place having more than 10 seats for customers, where food and drink are prepared, offered for sale and served to the public, primarily for consumption within the building or place, but shall include a fast food restaurant."

Similar to the foregoing comparison between a variety store and a convenience store, the difference in the definition of a dining room restaurant and a standard restaurant are very subtle. The Dining Room restaurant specifically excludes take-out food services whereas a secondary component of a standard restaurant may be take-out food. Staff interpret the proposed standard restaurant use to conform with the intent of the convenience commercial designation of the lands by the Official Plan. Furthermore, considering the orientation of the development to Steeles Avenue East and Kennedy Road South staff are of the opinion that any impacts of a standard restaurant in the surrounding area will be no different than those of a dining room restaurant.

It was also noted that to ensure that the proposed standard restaurant has minimal impact upon nearby residential uses, the applicants have suggested that live or televised entertainment be prohibited within any restaurant on this site. Staff support this suggestion and recommend that a standard restaurant be included as a permitted use on the site and that appropriate provisions be included within an amending zoning by-law to prohibit live or televised entertainment.

In addition, planning staff noted that both the Urban Design and Zoning Division and the Traffic Engineering Services Division have

concerns regarding the adequate provisions of parking on the site. The applicable zoning by-law requires that parking for a commercial plaza with a gross floor area of less than 2000 square metres be calculated at a ratio of 1 space for every 23 square metres. However, should restaurant and medical offices occupy more than 10% of the total gross floor area of the development, a higher parking ratio must be applied to those uses, thereby requiring more on-site parking. With respect to the subject development it was noted that the total gross floor area of restaurants and medical offices must be limited to less than 10% of the total gross floor area as additional parking cannot be accommodated on the site without reducing the size of the building on the site. The applicants indicated that they do not wish to reduce the size of the building and therefore such a provision is acceptable.

In conclusion, the Planning Department supported the subject application to include a variety store and a standard restaurant as permitted land uses on the subject property provided adequate measures are included in the amending zoning by-law and the development agreement to minimize impacts on the surrounding area.

In concluding his testimony, the planner for the appellant, the owners of the Village Plaza, stated that in his opinion nothing has changed since By-law 220-86 was approved in 1986 when both standard restaurant and variety store uses were excluded. In his opinion the issues that are being addressed today are the same issues that were addressed by the planning department in 1985 and yet today the planning staff are recommending approval. In his opinion a convenience store and a variety store are dissimilar as are a dining room restaurant and a standard restaurant.

On cross-examination he stated that he is unaware whether his clients at the time they purchased the Village Plaza were aware of what development was proposed for the Westlodge lands. He agreed that when the Board approved By-law 220-86 it stated in its order "it

is satisfied that all pertinent planning matters had been addressed." He also admitted that the united application for the Westlodge lands was for 2.48 acres whereas this proposal which was approved by Council is for only 1.4 acres. The original proposal didn't have an exit on Steeles Avenue whereas this proposal allows for an exit on Steeles Avenue. The commercial area has been reduced proportionately with the land area in that it has been reduced from 20,000 square metres to 13,000 square metres. He also agreed that there is a raised median on Steeles Avenue in front of the Westlodge property and that there is a large residential subdivision to the south west of the Westlodge site which was not developed in 1985.

He stated that his client's site, the Village Plaza Shopping Centre, like the Westlodge Holdings Inc. lands is designated a convenience commercial centre and in the Village Plaza site both a convenience store and a variety store are permitted uses. He agreed that in Brampton, convenience stores, variety stores and standard restaurant are normal uses found in the convenience commercial centre C1 zone. While he had some concerns that By-law 174-91 was deficient in fact there were no requirements for either front yard or exterior side yards setbacks, he agreed that the site plan submitted as Exhibit 15 indicates a front yard setback from Kennedy Road of 22 metres and the exterior side yard of 32 metres when By-law 139-84 requires the front yard setback to be 15 metres and the exterior side yard to be 6 metres. Consequently in both instances the setbacks are more than are required.

He admitted that the Official Plan does not require a market study report for the kind of development proposed by Westlodge Holdings Inc. and he agrees that there is need for flexibility to allow viability of commercial development in today's economic times.

He agreed that in Section 4.5 of Exhibit 12 extracts from the Secondary Area Plan 17 as it applies to his client's lands (Village Plaza), states that the proposed neighbourhood commercial area

located on the north-west corner of the intersection of Kennedy Road South and Steeles Avenue East will serve the day to day needs of the surrounding residents. It will consist primarily of a convenience food store but may include two or three other small shops. He admitted that they currently have seven occupied shops as well as one vacant. He stated the Village Plaza is allowed to have live or big dish video entertainment. He allowed that By-law 174-91 as it applies to the Westlodge Holdings Inc. site is a more restrictive by-law than the by-law applying to his client's lands (Village Plaza). He stated he would like to see the variety store use eliminated from the Westlodge lands for two reasons (a) because of the history of the site and (b) there hasn't been a need demonstrated.

He agreed that the Official Plan does not require a market study and the municipality never requested one be done. He agreed that both sites (the Westlodge Holdings Inc. site and the Village Plaza site) have a convenience use, both are on a collector road, both are in the same range of size in building area and both are in the same range of acreage size.

He admitted that when By-law 220-86 was before the Board the objectors were the Peel Condominium Corporation No. 19, Ledenhall Properties Limited, the Peel Board of Education, and a number of local residents. However, for this By-law 174-91 the only objectors are his clients - the owners of the Village Plaza.

In conclusion he stated it is his clients belief that in enacting the new zoning by-law, City council attempted to override the earlier decision of the Ontario Municipal Board which approved By-law 220-86 and in so doing City Council has allowed the owner of the subject property to do what it was not allowed to do when its proposed re-zoning was originally reviewed by the Board. They believe the new uses of the subject lands will have a direct negative impact on the established businesses which operate in their shopping centre and the neighbourhood as a whole.

The only other witness to testify on behalf of the appellants was the property manager for 1003254 Ontario Limited, the owners of Village Plaza. He testified that the owners purchased the property on December 6, 1992 and that they were aware that the Westlodge Holdings Inc. property was posted indicating a proposed by-law amendment, however, they were not aware of the uses proposed. He indicated that loitering was and still is a problem at the Village Plaza Shopping Centre and submitted Exhibit 27 which was a letter sent to the previous site managers from the Peel Regional Police. This letter indicates that the loitering is caused basically by the design of the plaza and not by any specific uses. It suggests corrective measures such as natural surveillance and/or natural access control, i.e. eliminating excessive window use, and by locating planters, window boxes and garbage containers in strategic locations where people are wont to loiter. On cross-examination he admitted that they have video games in the variety store which may contribute to the loitering problem.

The final witness to testify before the Board was the Planner for the City of Brampton. He agreed with all of the evidence submitted by the Planner for the appellants in so far as the Official Plan, Comprehensive Zoning By-law and the chronology of events.

He stated that the initial application by Westlodge Holdings Inc. on January 14, 1986 was for a 2.4 acre site with no access on to Steeles Avenue East and a plaza in excess of 2000 square metres which Staff recommended be refused. A re-application with the site downsized to 1.4 acres, access on to Steeles Avenue East, removal of access to the south through the subdivision and a down-sizing of the plaza was made and with these changes the application was approved.

The subject lands are designated convenience commercial in Schedule A. In Schedule F they are designated convenience commercial and in Official Plan Amendment 61 the Fletchers Creek Secondary Plan they are also designated convenience commercial. In By-law 291-80

the implementing by-law for Official Plan Amendment 61 Section 6.2, states:

"that a Convenience Commercial Area shall consist of one or more retail or service establishments planned and developed as a unit to serve 5,000 to 20,000 people. Although Convenience Commercial areas may range in size from 500 to 2,000 square metres (5,400 to 21,500 square feet) in gross leasable area, such areas are generally less than 1,000 square metres (10,700 square feet) in size. The site area will be in the range of 0.4 - 1.6 hectares (1 - 4 acres). A Convenience Commercial area will generally be anchored by a jug milk or small grocery store."

The subject property is zoned Commercial 1 Section 628 under By-law 139-84 as specifically amended by By-law 220-86 which was modified by the Ontario Municipal Board. This is the by-law that is currently in place. By-law 174-91 now before the Board will permit two additional uses; variety store and a standard restaurant in addition to those uses in By-law 220-86 at the present time.

It is either a convenience store or a variety store and a dining room restaurant or a standard restaurant. This will give the applicant a little more flexibility in choosing the type of store and restaurant that best suits his particular needs.

The planner for the City of Brampton testified that the definition of convenience store is found in By-law 139-84 and while the definition of variety store is not found in this by-law it is found in By-law 220-86 which amended By-law 139-84.

In his opinion there is very little difference between a variety store and a convenience store in that a variety store is defined in part as "a retail establishment in the business of selling food and convenience goods to the general public" while the convenience store is slightly more specific in stating in part "a retail establishment engaged in the business of selling groceries, meat, fruit and vegetables", just an expansion on the word 'food'. The other small difference is in the size with a variety store having a gross floor

area under 300 square metres while the convenience store has a gross floor area of less than 600 square metres.

As to the definition of dining room restaurant and standard restaurant they are both found in By-law 139-84. Again in his opinion there is very little difference between the two types. The only difference being the dining room restaurant prohibits take out service while the standard restaurant allows some take out.

As to the appellants' position that a marketing study should have been done, he drew the Board's attention to Section 2.2.3.24 of the Official Plan dealing with Shopping Centre Impact Studies which states:

"Every application for the development of a Regional, District or Neighbourhood Commercial area shall contain supporting information indicating the economic, physical and transportation impact of the proposed development."

He maintains that this would indicate that a market study is not required for the development of a convenience commercial site of this size.

As to the appellant's planner's concern that the setback requirements are not specific and spelled out in By-law 174-91, he stated that Section 628.3 stated it shall be subject to the requirements and restrictions relating to the C1 zone and all the general provisions of this by-law which are not in conflict with the ones set out in Section 628.1.2. The general By-law 139-84, in Section 23.1.2 sets out among other requirements and restrictions, the minimum front yard depth to be 15 metres and the minimum exterior setback to be 6 metres. Therefore, in his opinion, since the site plan submitted as Exhibit 15 indicates a front yard setback from Steeles Avenue of 22 metres and an exterior side yard setback of 32 metres they are more than adequate since they are substantially more than is required by the by-law. As to the appellant's concern about the parking requirements in By-law 174-91 the referral again is back

to the parent By-law 139-84 and in this case shopping centres having a gross leasable commercial floor area of less than 200 square metres - the requirement is one parking space for each 23 square metres. To ensure that 174-91 complies with this section the gross floor area of the restaurant has been restricted to 122 square metres which is 10% of the gross floor area or 1 - 23 square metres.

He pointed out that when this application for By-law 174-91 was circulated the only objection filed was by the owners of the Village Plaza Shopping Centre across the street from the subject property.

In his opinion By-law 174-91 conforms to both the Official Plan and the Fetcher Creek South Secondary Plan. It is comparable to uses already existing in current By-law 220-86 and would be considered similar to uses in other commercial C1 zones and would be compatible with the surrounding land use.

It would be acceptable from a traffic perspective based on comments received from the Traffic and Service Commission along with those comments from the engineering departments of the Region of Peel and of Brampton. Based on conditions imposed through a development agreement, By-law 174-91 would be appropriate and constitute good planning.

On cross-examination he stated he agrees with the staff report in which it is stated that a standard restaurant is an allowable use and that the impact will be no different from that created by a dining room restaurant. Similarly from a parking perspective there would be no difference. He also commented that generally speaking the City does not include a site plan with a site specific by-law because normally these matters can be developed in the development agreement.

Finally, he admitted that it was an oversight in excluding the definition of "Variety Store" from By-law 174-91 and it was his recommendation it should be included.

In making its decision, the Board has considered all of the evidence that has been presented and prefers the evidence submitted by the Planner for the Municipality. The Board does not accept the argument submitted by the planner for the appellants that nothing has changed since the decision of the Planning Department to reject the application submitted by the applicant in January 1986. The Board is satisfied that the application today is different to the original application by Westlodge Holdings Inc. in that the original proposal was for 2.48 acres and the present proposal approved by Council is for 1.4 acres. The original proposal did not allow for an exit on Steeles Avenue, whereas the present proposal does; the commercial area has been reduced proportionately to the land area reduction from approximately 20,000 square metres to approximately 13,000 square metres; there is a median strip on Steeles Avenue East which is to be extended; and finally an entire residential subdivision has been developed south and west of the subject site which was vacant land when the original application was made.

Furthermore, when the Board was dealing with By-law 220-86 in 1987 there were objections not only from the original owners of the Village Plaza Shopping Centre but also the Peel Condominium Corporation No. 19, the Peel Board of Education and others as well, and at that time there was no residential development to the south and west of the subject site.

For this appeal the neighbouring subdivision is completed and there are no objections from any of the previous objectors in 1987 with the exception of the appeal by the current owners of the neighbouring Village Plaza Shopping Centre across the street.

At the previous Board hearing on March 4, 1987, "a dry cleaning and laundry distribution" as well as "a personal service shop excluding a hairdressing salon and a barber shop" were deleted.

Also the Board stated in its disposition that all pertinent planning matters had been addressed. It is quite evident from the evidence that no specific litigation took place at the hearing as to the difference between 'Variety' and 'Convenience' stores and between 'Dining Room Restaurant' and 'Standard Restaurant'. The Board simply excluded variety store and Standard Restaurant.

Furthermore, the Board does not agree with counsel for the appellant when she suggests that the applicant should have done a market analysis to substantiate a need nor does the Board feel this application is an abuse of the process.

In the first instance Section 2.2.2.23 is quite clear that a market study is required for the development of a Regional, District or Neighbourhood commercial area. There is no suggestion one is required for a convenience commercial area. As to the suggestion it is an abuse of the process, Section 34(11) of the Planning Act allows an applicant to appeal if a municipality refuses or fails to respond. If the applicant appeals the municipality is obligated to respond, this is not an abuse of the process. In addition, the agreement signed between Ledenhall Properties Limited and Westlodge Holdings Inc. on December 21, 1987 made it quite clear that amendments to By-law 220-86 would be allowed at a later date without raising this argument. This therefore would not be an abuse of the process should it happen.

As to the parking requirements, the front yard setback and the exterior side yard setback, the Board is satisfied that all three have been adequately addressed and set out in a satisfactory manner in By-law 139-84. Finally, as to the appellants concern about a loitering problem, the Peel Board of Education obviously does not

perceive it to be a problem or they would have objected, and the Peel Regional Police force in its comments have indicated that the problem is due in large part to architectural design which can be corrected. They do not mention that the loitering is due to specific uses.

The Board does however agree with all counsel that it would be advantageous to define 'Variety Store' in By-law 174-91. Therefore the decision and order of the Board is that the appeal is allowed only to the extent necessary to amend By-law 174-91 as submitted in Exhibit 19 attached hereto as Schedule "A". In all other respects, the appeal is dismissed.

Counsel for the applicant in argument stated that the appellant's counsel and planner throughout this hearing had continually stressed the importance of the history of the site and that the Board had made a decision in 1987 that variety store and standard restaurant uses were inappropriate when in fact these two particular uses were never litigated at the hearing on By-law 220-86 in 1987. The appellant was also alleging it was an abuse of the process. In addition, the appellants purchased the property on December 8, 1992 and were unaware that a by-law amendment was pending until February 9, 1993 when the previous owners advised them that they had appealed the by-law to the Ontario Municipal Board and were intending to withdraw their appeal but the new owners might wish to carry on with the appeal.

Counsel for the applicant stated that the planner for the city had testified that the two proposed new uses are appropriate in a Convenience Commercial area and on the Westlodge site.

Counsel for the applicant stated that the appellant is simply seeking to limit competition. This is confirmed by the planner for the appellant, who under cross-examination stated that certainly the competitive position of the appellant in the market place is a consideration.

In conclusion, counsel for the applicant requested costs be awarded to his client, not to penalize the appellant but rather to compensate his client for costs which he shouldn't have had to incur. He argues that the appellant had no professional market analyst to assist the Board, there was no sound planning reason why the by-law should not be approved and it is not the Board's position to regulate the market. The appellant should have known this since he was represented by both a competent lawyer and a planner.

Counsel for the appellant in reply stated that Ledenhall Properties as a result of the agreement signed on December 2, 1987 with Westlodge Holdings Inc. has the right to object to any amendment or application. She also stated that counsel for the City has said in argument that he felt the recommendation of the Planning Department was flawed when asked by Council to address the loitering problem and recommend a list of uses which should not be allowed.

She stated that when the appellants found out on February 9, 1993 that the Ontario Municipal Board hearing was scheduled for March 2, 1993, they immediately retained counsel and a planner. They in turn contacted counsel for the City and the applicant requesting an adjournment. It was their opinion that an adjournment might give them some time to familiarize themselves with the application which could quite possibly have resulted in them withdrawing the appeal as Ledenhall was prepared to do. However, with the applicant denying their request they had no other alternative but to proceed as quickly as possible.

On a review of the application they found that in By-law 220-86 a variety store and a standard restaurant had not been included. It seemed strange to them that in this By-law 174-91 the Planning Department had done a complete about face and were now recommending the inclusion of the two uses they had previously refused. The set of circumstances had them justifiably concerned.

In reply, counsel for the applicant stated they did not consent to the adjournment because there was no indication given that there might be a settlement. He concluded saying that he and counsel for the City agreed to meet with the appellants but were advised there was no point in meeting.

In his opinion, the appellant is not an ordinary citizen but rather a commercial competition represented by counsel and supported by an experienced land use planner and the appeal is not based on sound planning principles but rather is simply an attempt to limit the competition from a similar convenience commercial site across the street.

Having carefully considered the argument on costs by both counsel the Board finds that the appellants had legitimate concerns. With the time constraints placed on them by the delay which was not their fault in becoming aware of the impending Board hearing they acted as expeditiously as possible. Their appeal is neither frivolous nor vexatious therefore the Board will dismiss the order for costs. The Board so orders.

DATED at TORONTO this 5th day of May, 1993.

"E. F. Crossland"

E. F. CROSSLAND
MEMBER



Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

SCHEDULE 'A'



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number 174-91

To amend By-law 139-84, as amended,
(part of Lot 15, Concession 1, E.H.S.,
geographic Township of Toronto)

The council of The Corporation of the City of Brampton ENACTS
as follows:

1. By-law 139-84, as amended, is hereby further amended:

- (1) by deleting therefrom, Schedule C - Section 628;
- (2) by deleting from Section 3.2 thereof, as a plan included in Schedule C, the following:

"Schedule C - Section 628"

- (3) by deleting section 628 therefrom, and substituting therefor, the following:

"628 The lands designated C1-SECTION 628 on Sheet 7 of Schedule A to this by-law:

628.1 shall only be used for the following purposes:

- (a) a retail establishment having no outside storage, but not including a beer, liquor or wine store, retail establishments selling goods that appeal to erotic tastes, a record store or a novelty store;
- (b) a convenience store, or a variety store;
- (c) a bank, trust company, or financial institution;
- (d) an office;
- (e) a personal service shop excluding a hairdressing salon and a barber shop;
- (f) a service shop;
- (g) a laundromat;
- (h) a dining room restaurant or a standard restaurant, and

- (i) purposes accessory to the other permitted purposes.

628.2 shall be subject to the following requirements and restrictions:

- (a) minimum lot area: 0.56 hectares;
- (b) minimum lot width: 88.0 metres;
- (c) minimum lot depth: 62.0 metres;
- (d) minimum rear yard depth: 5.5 metres;
- (e) minimum interior side yard: 9.0 metres;
- (f) maximum building height: one storey;
- (g) maximum gross commercial floor area: 1,219.0 square metres;
- (h) video or amusement arcades, pool and billiard halls, and bowling alleys shall not be permitted;
- (i) the total gross commercial floor area to be devoted to restaurant uses and medical office uses shall not exceed 122.0 square metres;
- (j) video games and amusement devices shall not be permitted within a variety store;
- (k) an adult entertainment parlour shall not be permitted;
- (l) food related refuse storage and restaurant refuse storage shall be located within a climate controlled area within a building;
- (m) a landscaped open space area, not less than 7.5 metres wide, shall be provided and maintained along the Kennedy Road South frontage, exclusive of the driveway location, and along the hypotenuse of the daylight triangle located at the intersection of Steeles Avenue East and Kennedy Road South;

- (n) a landscaped open space area, not less than 9.0 metres wide, shall be provided and maintained along the Steeles Avenue East flankage, exclusive of the driveway location.
- (o) garbage and refuse storage facilities, including any storage of recyclable materials, shall be enclosed and roofed and located within a building, and
- (p) a solid masonry wall having a minimum height of 1.8 metres shall be provided and maintained along the west and south site limits where abutting a residential zone.

628.3 shall also be subject to the requirements and restrictions relating to the C1 zone and all the general provisions of this by-law which are not in conflict with the ones set out in section 628.1.2."

628.4 for the purposes of Section 628:

VARIETY STORE shall mean a retail establishment engaged in the business of selling food and convenience goods to the general public which may include the sale of prepared food without seating for the consumption of food on the premises and having a gross commercial floor area of less than 300 square metres.



Ontario Municipal Board
Commission des affaires municipales de l'Ontario

SCHEDULE 'A'



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number 174-91

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- (b) a convenience store, or a variety store;
- (c) a bank, trust company, or financial institution;
- (d) an office;
- (e) a personal service shop excluding a hairdressing salon and a barber shop;
- (f) a service shop;
- (g) a laundromat;
- (h) a dining room restaurant or a standard restaurant, and

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- (d) minimum rear yard depth: 5.5 metres;
- (e) minimum interior side yard: 9.0 metres;
- (f) maximum building height: one storey;
- (g) maximum gross commercial floor area: 1,219.0 square metres;
- (h) video or amusement arcades, pool and billiard halls, and bowling alleys shall not be permitted;
- (i) the total gross commercial floor area to be devoted to restaurant uses and medical office uses shall not exceed 122.0 square metres;
- (j) video games and amusement devices shall not be permitted within a variety store;
- (k) an adult entertainment parlour shall not be permitted;
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- (n) a landscaped open space area, not less than 9.0 metres wide, shall be provided and maintained along the Steeles Avenue East flankage, exclusive of the driveway location.
- (o) garbage and refuse storage facilities, including any storage of recyclable materials, shall be enclosed and roofed and located within a building, and
- (p) a solid masonry wall having a minimum height of 1.8 metres shall be provided and maintained along the west and south site limits where abutting a residential zone.

628.3 shall also be subject to the requirements and restrictions relating to the C1 zone and all the general provisions of this by-law which are not in conflict with the ones set out in section 628.1.2."

628.4 for the purposes of Section 628:

VARIETY STORE shall mean a retail establishment engaged in the business of selling food and convenience goods to the general public which may include the sale of prepared food without seating for the consumption of food on the premises and having a gross commercial floor area of less than 300 square metres.

DB #	96	FOLIO #	282
ORDER ISSUED DATE			
MAY 05 1993			
DB #	1993-3	FOLIO #	289



R 910554

Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF Section 34(18) of
the Planning Act, 1983

AND IN THE MATTER OF an appeal by
Ledenhall Group Holdings Limited,
carried on by 1003254 Ontario
Limited, against Zoning By-law 174-
91 of the City of Brampton

C O U N S E L :

Heather Picken	- for	Ledenhall Group Holdings Limited
Clay Connor	- for	City of Brampton
R. K. Webb, Q.C.	- for	Westlodge Holdings Inc.

DECISION delivered by E. F. CROSSLAND and ORDER OF THE BOARD

On September 16, 1991 Ledenhall Group Holdings Limited, the owners at the time, of Village Plaza Shopping Centre located at the north-west corner of Steeles Avenue and Kennedy Road in the City of Brampton, appealed Zoning By-law 174-91 which was passed on August 19, 1991.

By-law 174-91 was a site specific by-law dealing with the lands directly across the street from the Village Plaza on the south west corner of Steeles Avenue and Kennedy Road, owned by Westlodge Holdings Inc.

Their objection to By-law 174-91 is spawned by the belief that By-law 139-84 was previously amended five years ago by By-law 220-86. By-law 220-86 was enacted after city council adopted reports from its Planning Committee and Planning and Development Department which recommended that a standard restaurant and variety stores should not be permitted to operate at the subject property. The by-law expressly prohibited the use of the lands for a variety store, and

it excluded the use for a standard restaurant. The by-law was subsequently appealed to the Ontario Municipal Board where it was reviewed and certain aspects of the by-law were amended by the Board. However, the by-law prohibitions against the use of the lands for variety stores and standard restaurants remained unchanged.

They believe that in enacting the new zoning by-law City Council has attempted to override the earlier decision of the Ontario Municipal Board which approved By-law 220-86, as amended. In so doing, City council has allowed the owner of the subject property to do what it was not allowed to do when its proposed rezoning was originally reviewed by the Board.

Ledenhall Group Holdings Limited subsequently sold the Village Plaza Shopping Centre to Helmsbridge Holdings Limited who in turn sold the property to 1003254 Ontario Limited on December 8, 1992. As a result, since 1003254 Ontario Limited had a greater interest in the appeal against Zoning By-law 174-91 than either Ledenhall Group Holdings Limited or Helmsbridge Holdings Ltd., the latter two companies consented and agreed to the appeal being assumed by 1003254 Ontario Limited. This transfer of the interest in the appeal came to the Board's attention by way of a letter received from Ledenhall Group Holdings Limited and Helmsbridge Holdings Ltd. dated February 19, 1993.

At the commencement of the hearing counsel for the applicant advised the Board that depending on the evidence called he may or may not call any witnesses and may rely on the city to present the case. He may however, wish to cross-examine the witnesses that appear on behalf of the appellant.

He very briefly advised the Board that in the Official Plan, Schedule "A" indicates the subject property is designated "Commercial". In Schedule "F" it is designated "Convenience Commercial". In the Fletchers Creek South Secondary Plan that

applies to the subject area it is also designated as "Convenience Commercial" and finally , the site specific By-law 139-84 as amended, designates the site "Commercial One - Section 628 (C1-Sec 628)".

He went on to say the issues are not complicated in that at the present time the zoning by-law allows among other uses a convenience store and a dining room restaurant. By-law 174-91, if allowed to stand, would result in a very minor increase in the flexibility of the site, in that it would add in addition to the existing uses, a variety store and a standard restaurant. The owner then would have a choice of either a variety store or a convenience store and either a dining room restaurant or a standard restaurant.

Mr. Michael Gagnon the Planner for the appellants advised the Board that his clients own the Village Plaza in the northwest corner of Steeles Avenue East and Kennedy Road South.

On Schedule A to the Official Plan the Village Plaza site is designated as Commercial. On Schedule D which identifies new development areas, the Village Plaza site is not identified as such, but rather is identified as part of the existing fabric of the area. In Schedule F which identifies and designates commercial sites the Village Plaza site is designated as convenience commercial.

Schedule H identifies the major transportation elements and major road networks. The Village Plaza site fronts on Steeles Avenue East which is a major arterial road while Kennedy Road on the east side of the Village Plaza is a minor arterial road.

Schedule I identifies the various road widths. Steeles Avenue East being a major arterial road has a right-of-way of 36 metres or 120 feet while Kennedy Road being a minor arterial road has a right-of-way of 30 metres or 100 feet.

Schedule K which identifies the Secondary Plan areas indicates the Village Plaza site is in Secondary Plan Area 17 and Section 4.5 states that the neighbourhood commercial uses will be permitted on the sites designated for the purpose. Except for a single location, these uses already exist. Section 4.5 goes on to say that the proposed neighbourhood commercial area located on the north-west corner of the intersection of Kennedy Road South and Steeles Avenue will serve the day to day needs of the surrounding residents. It will consist primarily of convenience food stores but may include two or three other small shops.

The Village Plaza site is zoned in By-law 200-82 as C1-Section 134.

Section 134 states lands designated C1-Section 134 on Schedule A to this by-law shall only be used for the purposes permitted in the C1 zone by Section 21.1.1.

Section 21.1.1 identifies those uses as

(a) Commercial

- (1) a retail establishment having no outside storage
- (2) a grocery store
- (3) a service shop
- (4) a personal service shop
- (5) a bank, trust company or finance company
- (6) an office
- (7) a dry cleaning and laundry distribution station
- (8) a laundromat
- (9) a parking lot, and
- (10) a dining room restaurant, a mixed service restaurant, a takeout restaurant.

The planner continued by stating that the lands that are the subject of this appeal owned by Westlodge Holdings Inc. and located across the street in the south west corner of Steeles Avenue and Kennedy Road compare to the Village Plaza as follows.

	<u>Village Plaza</u>	<u>Westlodge Holdings Inc.</u>
Area	.357 hectares/.882 acres	.568 hectares/1.04 acres
G.F.A. of Building	956.37m ² or 10,294 ft ²	Proposed: 1,219 m ² or 13,121 ft ²
Coverage	26.98%	21.5%
% Landscaped Open Space	14.94%	42.5%
Paved Area	58.08%	36%
Parking	41 spaces	53 spaces

In the Official Plan Schedule A, the Westlodge Holdings Inc. lands were designated Commercial as were the Village Plaza lands. However, in Schedule D it was identified as a new development area. In Schedule F it was not identified as either commercial or convenience commercial, finally Schedule K identified it as being in Secondary Planning Area '24'.

As a result of the appeals by Peel Condominium Corporation #19, Ledenhall Properties and the Peel Board of Education against By-law 220-87, in March 1987, the Ontario Municipal Board held a hearing and dismissed the appeals against By-law 220-86, a site specific by-law amending By-law 139-84 by changing the zoning designation from Agriculture "A" to Commercial One - Section 628(c) on the Westlodge site.

In Section 628-1 it states the land shall only be used for the following purposes:

- (1) a retail establishment having no outside storage
- (2) a convenience store
- (3) a bank, trust company or financial institution
- (4) an office

- (5) a personal service shop excluding a hairdressing salon or barber shop
- (6) a service shop
- (7) a laundromat
- (8) a dining room restaurant, and
- (9) purposes accessory to the other permitted uses.

In 628.2 (4) the minimum front yard setback was established as 22.0 metres

(7) minimum exterior side yard setback was established at 32.0 metres.

Both of these requirements are absent in By-law 174-91 which is currently before the Board. In addition, 628.2(9) established the gross commercial floor area at 1,219 square metres.

By-law 220-86 excluded hairdressing salons and barber shops from the personal service shops as well as dry cleaning and laundry distribution. In Section 628-2(10) it also excluded video or amusement arcades, pool and billiard halls and bowling alleys.

Finally, it defined 'Retail Establishment' as a building or place where goods or materials are sold or kept for sale to the general public but shall not include: beer, liquor or wine stores; retail establishments selling goods that appeal to erotic tastes; a record store, novelty store or variety store.

'Variety Store' shall mean a retail establishment engaged in the business of selling food and convenience goods to the general public which may include the sale of prepared food without seating for the consumption of food on the premises and having a gross commercial floor area of less than 300 square metres.

The planner then submitted By-law 174-91 as Exhibit 19 indicating that really the basic difference between this by-law

before the Board and By-law 220-86 which amended By-law 139-84 is that in Section 628.1 of By-law 174-91 it

- (b) has been changed to 'a convenience store' or 'a variety store'
- (h) has been changed to 'a dining room restaurant' or 'a standard restaurant'.

In addition, in Section 628.2 the following restrictions are found:

- (h) video or amusement arcades, pool and billiard halls, and bowling alleys shall not be permitted.
- (i) the total gross commercial area to be devoted to restaurant uses and medical office uses shall not exceed 122.0 square metres.
- (j) video games and amusement devises shall not be permitted within a variety store
- (k) an adult entertainment parlour shall not be permitted

and the definition of a Retail Establishment and a variety store have been excluded as have the setbacks from minimum front yard and minimum exterior side yard, which were all found in By-law 220-86.

He submitted as Exhibit 23 a historical chronology of the Westlodge Holdings Inc. lands going back to 1984 and referred to a letter found at Tab 5 of Exhibit 24, dated November 8, 1985 in which the City Planning Department stated that the proposed Westlodge convenience commercial site is within $\frac{1}{2}$ mile of three existing convenience commercial facilities (Village Plaza on the opposite side of Steeles Avenue, Peel Village Square Plaza at Rambler Drive and Kennedy Road, and a development at Rutherford Road and Steeles Avenue). In addition a number of other commercial and retail sites are located within a mile of the proposed site. This leads one to believe that the proposed convenience commercial use is not needed to serve the area.

He submitted Exhibit 25, a map of existing commercial facilities in the area, done on February 27, 1993 and an on-site inspection indicates that all the same facilities that were there in 1985 are still there today with the exception that today some of the tenants have changed. He does not believe a market study has been done since the Planning Department's recommendation was made on November 8, 1985 that would indicate a change is warranted.

He reviewed the policy's definitions and interpretation of the words 'Commercial' and 'Convenience Commercial' of the Official Plan submitted as Exhibit 9 especially Section 2.2.3.23(ii) of the Interpretation Section which states:

"The commercial centre proposal does not detrimentally encroach upon the primary trade area of an existing, viable competing centre."

He drew the Board's attention to Section 2.2.3.24 entitled "Shopping Centre Impact Studies", which states:

"Every application for the development of a Regional, District or Neighbourhood Commercial area shall contain supporting information indicating the economic, physical and transportation impact of the proposed development. The impact studies must provide information regarding the market feasibility of the proposed centre and whether or not it affects the viability of any existing nearby centres. All such studies shall be reviewed by the City and used as a basis for approval or refusal of a particular application."

He submitted Exhibit 26, the schedule from the January 14, 1986 Planning Development Staff Report with regard to Westlodge Holdings Inc. application to amend the Official Plan and zoning by-law to permit a convenience commercial facility on the subject lands. Admittedly this application dealt with a larger site (2.4 acres) than is proposed today, it had no access on to Steeles Avenue and there was insufficient frontage to accommodate the proposed convenience commercial centre. The Planning and Development department concluded that the proposed convenience commercial facility was otherwise inappropriate from a land use, market and transportation planning perspective and recommended that the application be refused.

After a number of public meetings and referrals to the Planning Department as to recommended exclusions, By-law 220-86 was passed by Council and those exclusions are still in effect today, including video arcade and uses likely to encourage young people to loiter, standard restaurant and variety store uses.

In his opinion a convenience store is more similar to a supermarket than a variety store in that By-law 139-84 defines it as

"a retail establishment engaged in the business of selling groceries, meat, fruit and vegetables to the general public and occupying premises having a gross commercial floor area of less than 600 square metres."

The same by-law defines supermarket with exactly the same wording except it adds "at least 600 square metres". On the other hand, By-law 220-86 to amend By-law 139-84 defines variety store as

"a retail establishment engaged in the business of selling food and convenience goods to the general public which may include the sale of prepared food without seating for the consumption of food on the premises and having a gross commercial floor area of less than 300 square metres."

He is also of the opinion that a dining room restaurant is different to a standard restaurant in that in a dining room restaurant, food and drink are consumed at the same table or counter within the restaurant where it is ordered, while in a standard restaurant, food and drink are prepared, offered for sale, and served to the public primarily for consumption within the same building or place but shall not include a fast food restaurant. He believes the word "primarily" means it could be "take out" and therefore Dining Room Restaurants and Standard Restaurants are different.

Subsequent to the Ontario Municipal Board approving Zoning By-law 220-86 in March 1987, Westlodge Holdings Inc. and Ledenhall Properties on December 1987 registered an agreement on the Westlodge lands, whereby "if any of the prohibited uses in Paragraph 1, namely:

- (d) a beer, liquor or wine store
- (e) a retail establishment selling goods that appeal to erotic tastes
- (f) a record store
- (g) a novelty store
- (h) a variety store

should become a permitted use under the applicable zoning by-laws of the City of Brampton as a result of an amendment to the said by-law or relief otherwise obtained, the restriction contained in this agreement prohibiting such use shall be terminated."

It was further agreed that Ledenhall shall have the right to object to an amendment or application for relief, but shall not use the agreement or the covenants herein contained as a bar to such amendment or application.

On June 11, 1990 Westlodge Holdings Inc. made an application A99/90 for a minor variance from By-law 139-84 Schedule C - Section 628 to allow a change of use from dining room restaurant to standard restaurant and to add a variety store.

On July 17, 1990 the Committee of Adjustment approved the minor variance and on August 1, 1990 Ledenhall Group Holdings Limited filed a notice of appeal. An Ontario Municipal Board hearing on the appeal of the Committee of Adjustment decision was scheduled for May 2, 1991. The hearing set for May 2, 1991, was adjourned at the request of Westlodge Holdings Inc. and on April 4, 1991, Westlodge Holdings Inc. made an application for an amendment to Zoning By-law 139-84. On August 19, 1991 By-law 174-91 was passed by Brampton City Council amending Zoning By-law 139-84. On September 16, 1991 Ledenhall Group Holdings Limited appealed By-law 174-91 to this Board.

On February 14, 1992 the Ontario Municipal Board dismissed the Committee of Adjustment application as the application had been

withdrawn. On December 8, 1992 Ledenhall Group Holdings Limited sold the Village Plaza Shopping Centre to Helmsbridge Holdings Ltd., who in turn sold it to 1003254 Ontario Limited. Finally, on February 5, 1993, Helmsbridge Holdings Ltd. advised 1003254 Ontario Limited of the Ontario Municipal Board hearing scheduled for March 2, 1993.

The planner stated that the Committee of Adjustment application was for a minor variance to change Dining Room Restaurant to Standard Restaurant and to add a variety store. The minor variance application was approved by the Committee of Adjustment but was objected to by Ledenhall Group Holdings Limited and was not supported by the Planning Staff.

This was the reason the application was withdrawn and an application for an amendment to Zoning By-law 139-84 was made by Westlodge Holdings Inc.

As a result of Westlodge Holdings Inc. application for a zoning by-law amendment to their property on April 4, 1991, the Planning and Development Department filed a staff report on May 14, 1991 in which they stated:

"If the proposal is approved it would permit the applicant a broader range of permitted land uses on the property located at the southwesterly corner of Steeles Avenue East and Kennedy Road South. The applicant proposes to add a variety store and a standard restaurant to the list of permitted uses."

The staff noted that the uses proposed and the restrictions proposed on said uses will not compromise Council's original requirement to limit the permitted commercial uses on the site dating back to 1986, to those that do not encourage young people to loiter. The proposed uses are very similar to those uses which are currently permitted on the site and with the appropriate restrictions can be supported from a planning perspective.

Concerning the variety store, staff noted that By-law 220-86 currently permits a comparable land use, namely a Convenience Store. The zoning by-law defines a convenience store as follows:

"Convenience Store shall mean a retail establishment engaged in the business of selling groceries, meat, fruit and vegetables to the general public and occupying premises having a gross commercial floor area of less than 600 square metres."

In comparison the By-law defines a variety store as follows:

"Variety Store shall mean a retail establishment engaged in the business of selling food and convenience goods to the general public which may include the sale of prepared food without seating for the consumption of food on the premises and having a gross commercial floor area of less than 300 square metres."

In staff's opinion the definition of Convenience store and a variety store are very similar with the exception of the wording "the sale of prepared food without seating for the consumption of food on the premises" which is permitted in a variety store, and with the exception of the amount of gross floor area to be devoted to each use. In view of this, staff believe there is little planning rationale for not permitting a variety store on the subject lands.

In addition, staff are also of the opinion that City Council's original requirement to limit permitted uses on the site to those which do not encourage young people to loiter will not be compromised.

Concerning the requested standard restaurant use the Planning staff noted that a dining room restaurant is presently permitted on this property. The definitions for a dining room restaurant and a standard restaurant are as follows:

"Restaurant, Dining Room shall mean a building or place where food and drink are prepared and offered for sale to the public, to be served by a restaurant employee at the same table or counter where the food and drink were ordered and are to be consumed, and where take-out food services are not available."

"Restaurant, Standard shall mean a building or place having more than 10 seats for customers, where food and drink are prepared, offered for sale and served to the public, primarily for consumption within the building or place, but shall include a fast food restaurant."

Similar to the foregoing comparison between a variety store and a convenience store, the difference in the definition of a dining room restaurant and a standard restaurant are very subtle. The Dining Room restaurant specifically excludes take-out food services whereas a secondary component of a standard restaurant may be take-out food. Staff interpret the proposed standard restaurant use to conform with the intent of the convenience commercial designation of the lands by the Official Plan. Furthermore, considering the orientation of the development to Steeles Avenue East and Kennedy Road South staff are of the opinion that any impacts of a standard restaurant in the surrounding area will be no different than those of a dining room restaurant.

It was also noted that to ensure that the proposed standard restaurant has minimal impact upon nearby residential uses, the applicants have suggested that live or televised entertainment be prohibited within any restaurant on this site. Staff support this suggestion and recommend that a standard restaurant be included as a permitted use on the site and that appropriate provisions be included within an amending zoning by-law to prohibit live or televised entertainment.

In addition, planning staff noted that both the Urban Design and Zoning Division and the Traffic Engineering Services Division have

concerns regarding the adequate provisions of parking on the site. The applicable zoning by-law requires that parking for a commercial plaza with a gross floor area of less than 2000 square metres be calculated at a ratio of 1 space for every 23 square metres. However, should restaurant and medical offices occupy more than 10% of the total gross floor area of the development, a higher parking ratio must be applied to those uses, thereby requiring more on-site parking. With respect to the subject development it was noted that the total gross floor area of restaurants and medical offices must be limited to less than 10% of the total gross floor area as additional parking cannot be accommodated on the site without reducing the size of the building on the site. The applicants indicated that they do not wish to reduce the size of the building and therefore such a provision is acceptable.

In conclusion, the Planning Department supported the subject application to include a variety store and a standard restaurant as permitted land uses on the subject property provided adequate measures are included in the amending zoning by-law and the development agreement to minimize impacts on the surrounding area.

In concluding his testimony, the planner for the appellant, the owners of the Village Plaza, stated that in his opinion nothing has changed since By-law 220-86 was approved in 1986 when both standard restaurant and variety store uses were excluded. In his opinion the issues that are being addressed today are the same issues that were addressed by the planning department in 1985 and yet today the planning staff are recommending approval. In his opinion a convenience store and a variety store are dissimilar as are a dining room restaurant and a standard restaurant.

On cross-examination he stated that he is unaware whether his clients at the time they purchased the Village Plaza were aware of what development was proposed for the Westlodge lands. He agreed that when the Board approved By-law 220-86 it stated in its order "it

is satisfied that all pertinent planning matters had been addressed." He also admitted that the united application for the Westlodge lands was for 2.48 acres whereas this proposal which was approved by Council is for only 1.4 acres. The original proposal didn't have an exit on Steeles Avenue whereas this proposal allows for an exit on Steeles Avenue. The commercial area has been reduced proportionately with the land area in that it has been reduced from 20,000 square metres to 13,000 square metres. He also agreed that there is a raised median on Steeles Avenue in front of the Westlodge property and that there is a large residential subdivision to the south west of the Westlodge site which was not developed in 1985.

He stated that his client's site, the Village Plaza Shopping Centre, like the Westlodge Holdings Inc. lands is designated a convenience commercial centre and in the Village Plaza site both a convenience store and a variety store are permitted uses. He agreed that in Brampton, convenience stores, variety stores and standard restaurant are normal uses found in the convenience commercial centre C1 zone. While he had some concerns that By-law 174-91 was deficient in fact there were no requirements for either front yard or exterior side yards setbacks, he agreed that the site plan submitted as Exhibit 15 indicates a front yard setback from Kennedy Road of 22 metres and the exterior side yard of 32 metres when By-law 139-84 requires the front yard setback to be 15 metres and the exterior side yard to be 6 metres. Consequently in both instances the setbacks are more than are required.

He admitted that the Official Plan does not require a market study report for the kind of development proposed by Westlodge Holdings Inc. and he agrees that there is need for flexibility to allow viability of commercial development in today's economic times.

He agreed that in Section 4.5 of Exhibit 12 extracts from the Secondary Area Plan 17 as it applies to his client's lands (Village Plaza), states that the proposed neighbourhood commercial area

located on the north-west corner of the intersection of Kennedy Road South and Steeles Avenue East will serve the day to day needs of the surrounding residents. It will consist primarily of a convenience food store but may include two or three other small shops. He admitted that they currently have seven occupied shops as well as one vacant. He stated the Village Plaza is allowed to have live or big dish video entertainment. He allowed that By-law 174-91 as it applies to the Westlodge Holdings Inc. site is a more restrictive by-law than the by-law applying to his client's lands (Village Plaza). He stated he would like to see the variety store use eliminated from the Westlodge lands for two reasons (a) because of the history of the site and (b) there hasn't been a need demonstrated.

He agreed that the Official Plan does not require a market study and the municipality never requested one be done. He agreed that both sites (the Westlodge Holdings Inc. site and the Village Plaza site) have a convenience use, both are on a collector road, both are in the same range of size in building area and both are in the same range of acreage size.

He admitted that when By-law 220-86 was before the Board the objectors were the Peel Condominium Corporation No. 19, Ledenhall Properties Limited, the Peel Board of Education, and a number of local residents. However, for this By-law 174-91 the only objectors are his clients - the owners of the Village Plaza.

In conclusion he stated it is his clients belief that in enacting the new zoning by-law, City council attempted to override the earlier decision of the Ontario Municipal Board which approved By-law 220-86 and in so doing City Council has allowed the owner of the subject property to do what it was not allowed to do when its proposed re-zoning was originally reviewed by the Board. They believe the new uses of the subject lands will have a direct negative impact on the established businesses which operate in their shopping centre and the neighbourhood as a whole.

The only other witness to testify on behalf of the appellants was the property manager for 1003254 Ontario Limited, the owners of Village Plaza. He testified that the owners purchased the property on December 6, 1992 and that they were aware that the Westlodge Holdings Inc. property was posted indicating a proposed by-law amendment, however, they were not aware of the uses proposed. He indicated that loitering was and still is a problem at the Village Plaza Shopping Centre and submitted Exhibit 27 which was a letter sent to the previous site managers from the Peel Regional Police. This letter indicates that the loitering is caused basically by the design of the plaza and not by any specific uses. It suggests corrective measures such as natural surveillance and/or natural access control, i.e. eliminating excessive window use, and by locating planters, window boxes and garbage containers in strategic locations where people are wont to loiter. On cross-examination he admitted that they have video games in the variety store which may contribute to the loitering problem.

The final witness to testify before the Board was the Planner for the City of Brampton. He agreed with all of the evidence submitted by the Planner for the appellants in so far as the Official Plan, Comprehensive Zoning By-law and the chronology of events.

He stated that the initial application by Westlodge Holdings Inc. on January 14, 1986 was for a 2.4 acre site with no access on to Steeles Avenue East and a plaza in excess of 2000 square metres which Staff recommended be refused. A re-application with the site downsized to 1.4 acres, access on to Steeles Avenue East, removal of access to the south through the subdivision and a down-sizing of the plaza was made and with these changes the application was approved.

The subject lands are designated convenience commercial in Schedule A. In Schedule F they are designated convenience commercial and in Official Plan Amendment 61 the Fletchers Creek Secondary Plan they are also designated convenience commercial. In By-law 291-80

the implementing by-law for Official Plan Amendment 61 Section 6.2, states:

"that a Convenience Commercial Area shall consist of one or more retail or service establishments planned and developed as a unit to serve 5,000 to 20,000 people. Although Convenience Commercial areas may range in size from 500 to 2,000 square metres (5,400 to 21,500 square feet) in gross leasable area, such areas are generally less than 1,000 square metres (10,700 square feet) in size. The site area will be in the range of 0.4 - 1.6 hectares (1 - 4 acres). A Convenience Commercial area will generally be anchored by a jug milk or small grocery store."

The subject property is zoned Commercial 1 Section 628 under By-law 139-84 as specifically amended by By-law 220-86 which was modified by the Ontario Municipal Board. This is the by-law that is currently in place. By-law 174-91 now before the Board will permit two additional uses; variety store and a standard restaurant in addition to those uses in By-law 220-86 at the present time.

It is either a convenience store or a variety store and a dining room restaurant or a standard restaurant. This will give the applicant a little more flexibility in choosing the type of store and restaurant that best suits his particular needs.

The planner for the City of Brampton testified that the definition of convenience store is found in By-law 139-84 and while the definition of variety store is not found in this by-law it is found in By-law 220-86 which amended By-law 139-84.

In his opinion there is very little difference between a variety store and a convenience store in that a variety store is defined in part as "a retail establishment in the business of selling food and convenience goods to the general public" while the convenience store is slightly more specific in stating in part "a retail establishment engaged in the business of selling groceries, meat, fruit and vegetables", just an expansion on the word 'food'. The other small difference is in the size with a variety store having a gross floor

area under 300 square metres while the convenience store has a gross floor area of less than 600 square metres.

As to the definition of dining room restaurant and standard restaurant they are both found in By-law 139-84. Again in his opinion there is very little difference between the two types. The only difference being the dining room restaurant prohibits take out service while the standard restaurant allows some take out.

As to the appellants' position that a marketing study should have been done, he drew the Board's attention to Section 2.2.3.24 of the Official Plan dealing with Shopping Centre Impact Studies which states:

"Every application for the development of a Regional, District or Neighbourhood Commercial area shall contain supporting information indicating the economic, physical and transportation impact of the proposed development."

He maintains that this would indicate that a market study is not required for the development of a convenience commercial site of this size.

As to the appellant's planner's concern that the setback requirements are not specific and spelled out in By-law 174-91, he stated that Section 628.3 stated it shall be subject to the requirements and restrictions relating to the C1 zone and all the general provisions of this by-law which are not in conflict with the ones set out in Section 628.1.2. The general By-law 139-84, in Section 23.1.2 sets out among other requirements and restrictions, the minimum front yard depth to be 15 metres and the minimum exterior setback to be 6 metres. Therefore, in his opinion, since the site plan submitted as Exhibit 15 indicates a front yard setback from Steeles Avenue of 22 metres and an exterior side yard setback of 32 metres they are more than adequate since they are substantially more than is required by the by-law. As to the appellant's concern about the parking requirements in By-law 174-91 the referral again is back

to the parent By-law 139-84 and in this case shopping centres having a gross leasable commercial floor area of less than 200 square metres - the requirement is one parking space for each 23 square metres. To ensure that 174-91 complies with this section the gross floor area of the restaurant has been restricted to 122 square metres which is 10% of the gross floor area or 1 - 23 square metres.

He pointed out that when this application for By-law 174-91 was circulated the only objection filed was by the owners of the Village Plaza Shopping Centre across the street from the subject property.

In his opinion By-law 174-91 conforms to both the Official Plan and the Fetcher Creek South Secondary Plan. It is comparable to uses already existing in current By-law 220-86 and would be considered similar to uses in other commercial C1 zones and would be compatible with the surrounding land use.

It would be acceptable from a traffic perspective based on comments received from the Traffic and Service Commission along with those comments from the engineering departments of the Region of Peel and of Brampton. Based on conditions imposed through a development agreement, By-law 174-91 would be appropriate and constitute good planning.

On cross-examination he stated he agrees with the staff report in which it is stated that a standard restaurant is an allowable use and that the impact will be no different from that created by a dining room restaurant. Similarly from a parking perspective there would be no difference. He also commented that generally speaking the City does not include a site plan with a site specific by-law because normally these matters can be developed in the development agreement.

Finally, he admitted that it was an oversight in excluding the definition of "Variety Store" from By-law 174-91 and it was his recommendation it should be included.

In making its decision, the Board has considered all of the evidence that has been presented and prefers the evidence submitted by the Planner for the Municipality. The Board does not accept the argument submitted by the planner for the appellants that nothing has changed since the decision of the Planning Department to reject the application submitted by the applicant in January 1986. The Board is satisfied that the application today is different to the original application by Westlodge Holdings Inc. in that the original proposal was for 2.48 acres and the present proposal approved by Council is for 1.4 acres. The original proposal did not allow for an exit on Steeles Avenue, whereas the present proposal does; the commercial area has been reduced proportionately to the land area reduction from approximately 20,000 square metres to approximately 13,000 square metres; there is a median strip on Steeles Avenue East which is to be extended; and finally an entire residential subdivision has been developed south and west of the subject site which was vacant land when the original application was made.

Furthermore, when the Board was dealing with By-law 220-86 in 1987 there were objections not only from the original owners of the Village Plaza Shopping Centre but also the Peel Condominium Corporation No. 19, the Peel Board of Education and others as well, and at that time there was no residential development to the south and west of the subject site.

For this appeal the neighbouring subdivision is completed and there are no objections from any of the previous objectors in 1987 with the exception of the appeal by the current owners of the neighbouring Village Plaza Shopping Centre across the street.

At the previous Board hearing on March 4, 1987, "a dry cleaning and laundry distribution" as well as "a personal service shop excluding a hairdressing salon and a barber shop" were deleted.

Also the Board stated in its disposition that all pertinent planning matters had been addressed. It is quite evident from the evidence that no specific litigation took place at the hearing as to the difference between 'Variety' and 'Convenience' stores and between 'Dining Room Restaurant' and 'Standard Restaurant'. The Board simply excluded variety store and Standard Restaurant.

Furthermore, the Board does not agree with counsel for the appellant when she suggests that the applicant should have done a market analysis to substantiate a need nor does the Board feel this application is an abuse of the process.

In the first instance Section 2.2.2.23 is quite clear that a market study is required for the development of a Regional, District or Neighbourhood commercial area. There is no suggestion one is required for a convenience commercial area. As to the suggestion it is an abuse of the process, Section 34(11) of the Planning Act allows an applicant to appeal if a municipality refuses or fails to respond. If the applicant appeals the municipality is obligated to respond, this is not an abuse of the process. In addition, the agreement signed between Ledenhall Properties Limited and Westlodge Holdings Inc. on December 21, 1987 made it quite clear that amendments to By-law 220-86 would be allowed at a later date without raising this argument. This therefore would not be an abuse of the process should it happen.

As to the parking requirements, the front yard setback and the exterior side yard setback, the Board is satisfied that all three have been adequately addressed and set out in a satisfactory manner in By-law 139-84. Finally, as to the appellants concern about a loitering problem, the Peel Board of Education obviously does not

perceive it to be a problem or they would have objected, and the Peel Regional Police force in its comments have indicated that the problem is due in large part to architectural design which can be corrected. They do not mention that the loitering is due to specific uses.

The Board does however agree with all counsel that it would be advantageous to define 'Variety Store' in By-law 174-91. Therefore the decision and order of the Board is that the appeal is allowed only to the extent necessary to amend By-law 174-91 as submitted in Exhibit 19 attached hereto as Schedule "A". In all other respects, the appeal is dismissed.

Counsel for the applicant in argument stated that the appellant's counsel and planner throughout this hearing had continually stressed the importance of the history of the site and that the Board had made a decision in 1987 that variety store and standard restaurant uses were inappropriate when in fact these two particular uses were never litigated at the hearing on By-law 220-86 in 1987. The appellant was also alleging it was an abuse of the process. In addition, the appellants purchased the property on December 8, 1992 and were unaware that a by-law amendment was pending until February 9, 1993 when the previous owners advised them that they had appealed the by-law to the Ontario Municipal Board and were intending to withdraw their appeal but the new owners might wish to carry on with the appeal.

Counsel for the applicant stated that the planner for the city had testified that the two proposed new uses are appropriate in a Convenience Commercial area and on the Westlodge site.

Counsel for the applicant stated that the appellant is simply seeking to limit competition. This is confirmed by the planner for the appellant, who under cross-examination stated that certainly the competitive position of the appellant in the market place is a consideration.

In conclusion, counsel for the applicant requested costs be awarded to his client, not to penalize the appellant but rather to compensate his client for costs which he shouldn't have had to incur. He argues that the appellant had no professional market analyst to assist the Board, there was no sound planning reason why the by-law should not be approved and it is not the Board's position to regulate the market. The appellant should have known this since he was represented by both a competent lawyer and a planner.

Counsel for the appellant in reply stated that Ledenhall Properties as a result of the agreement signed on December 2, 1987 with Westlodge Holdings Inc. has the right to object to any amendment or application. She also stated that counsel for the City has said in argument that he felt the recommendation of the Planning Department was flawed when asked by Council to address the loitering problem and recommend a list of uses which should not be allowed.

She stated that when the appellants found out on February 9, 1993 that the Ontario Municipal Board hearing was scheduled for March 2, 1993, they immediately retained counsel and a planner. They in turn contacted counsel for the City and the applicant requesting an adjournment. It was their opinion that an adjournment might give them some time to familiarize themselves with the application which could quite possibly have resulted in them withdrawing the appeal as Ledenhall was prepared to do. However, with the applicant denying their request they had no other alternative but to proceed as quickly as possible.

On a review of the application they found that in By-law 220-86 a variety store and a standard restaurant had not been included. It seemed strange to them that in this By-law 174-91 the Planning Department had done a complete about face and were now recommending the inclusion of the two uses they had previously refused. The set of circumstances had them justifiably concerned.

In reply, counsel for the applicant stated they did not consent to the adjournment because there was no indication given that there might be a settlement. He concluded saying that he and counsel for the City agreed to meet with the appellants but were advised there was no point in meeting.

In his opinion, the appellant is not an ordinary citizen but rather a commercial competition represented by counsel and supported by an experienced land use planner and the appeal is not based on sound planning principles but rather is simply an attempt to limit the competition from a similar convenience commercial site across the street.

Having carefully considered the argument on costs by both counsel the Board finds that the appellants had legitimate concerns. With the time constraints placed on them by the delay which was not their fault in becoming aware of the impending Board hearing they acted as expeditiously as possible. Their appeal is neither frivolous nor vexatious therefore the Board will dismiss the order for costs. The Board so orders.

DATED at TORONTO this 5th day of May, 1993.

"E. F. Crossland"

E. F. CROSSLAND
MEMBER

IN THE MATTER OF the Planning Act,
R.S.O. 1990, as amended, section 38;

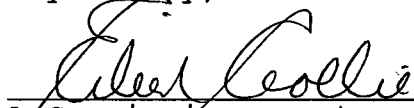
AND IN THE MATTER OF the City of
Brampton By-law 174-91, being a by-law
to amend comprehensive zoning
By-law 139-84, as amended, pursuant
an application by Westlodge Holdings
Inc. (File T1E15.12)

DECLARATION

I, KATHRYN ZAMMIT, of the Village of Erin, in the
County of Wellington, DO SOLEMNLY DECLARE THAT:

1. I am the Deputy Clerk of The Corporation of the
City of Brampton and as such have knowledge of
the matters herein declared.
2. By-law 174-91 was passed by the Council of the
Corporation of the City of Brampton at its
meeting held on the 19th day of August, 1991.
3. The Ontario Municipal Board, by its decision
and order issued the 5th day of May, 1993,
under File R 910554, has ordered that By-law
174-91 be approved, as amended.

DECLARED before me at the)
City of Brampton in the)
Region of Peel this 10th)
day of May, 1993)


A Commissioner, etc.

