

ISSUE DATE:

Sept. 16, 2008



PL080597

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

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject: Proposed Official Plan Amendment No.
Referred by: Joedy Burdett
Municipality: City of Niagara Falls
OMB Case No.: PL080597
OMB File No.: PL080597

APPEARANCES:

Parties

City of Niagara Falls

Joedy Burdett

Counsel

K. L. Beaman

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. E. SNIEZEK
ON SEPTEMBER 2, 2008**

Mr. Joedy Burdett (the Appellant) owns an automobile window tinting business located at 4480 Bridge Street in the City of Niagara Falls. Mr. Burdett applied for a site plan to expand his building by adding three floors and a mechanical penthouse. The City dealt with the application and requested a series of revisions to the plans. Mr. Burdett objected to the revisions and appealed the site plan approval to the Board.

The Board heard uncontested testimony from the Planning Director, Mr. Alex Herlovitch, that the issues in dispute were a grading plan, access to parking spaces, a one foot reserve along the rear of the property and that the access point on Bridge Street should be combined with an abutting property. The size of the access point should be to the satisfaction of the Regional Municipality of Niagara. The access point relocation may require some changes to the landscaping plan according to Mr. Herlovitch.

Mr. Herlovitch is a Registered Professional Planner with over thirty years of municipal planning experience. Mr. Herlovitch informed the Board that the subject lands are designated "Major Commercial" in the City's official plan that was approved in 1993 and zoned CB (Central Business) in By-law 79-200 that was approved by the OMB in 1981. Mr. Herlovitch testified that the whole of the City of Niagara Falls is designated as an area of development control and specific uses such as rural and agricultural uses are exempt.

The official plan, according to Mr. Herlovitch, allows for residential uses above the commercial use on the first floor and the zoning regulations restrict the residential use to 75% of the "total floor area".

Mr. Herlovitch also testified that three variances had been authorized from Zoning By-law 79-200 that: increased the height from 12m to 14.5m; reduced the required setback for a garage from 3m to 0.0m; and permitted the manoeuvring aisles for the parking spaces to be located on a right-of-way owned by the City and where the Appellant has a registered easement.

In response to the concerns expressed by the Appellant the City has removed the requirement for the one-foot reserve. The City also removed its concern about the accessibility of the parking spaces.

The Appellant did not want to have a professionally prepared grading plan and submitted a grading plan and calculations that he had prepared (Exhibit 7).

The Board heard the uncontested testimony of Mr. Herlovitch that the conditions of a grading and drainage plan, proper site plan drawings, and driveway access and landscaping could be easily resolved and should be attached by the Board as conditions of the site plan approval.

The Board accepts the position of the Municipality that the site plan be approved subject to the following conditions: that a site plan including a grading plan prepared by a qualified person; that the combined access point on Bridge Street is shown on the plans and that the expanded landscape area is also shown.

The Appeal is allowed, the site plan is approved subject to the conditions. However, the Board Order is withheld pending the completion of the site plan agreement, to the satisfaction of the City.

“J. E. Sniezek”

J. E. SNIEZEK
MEMBER