

ISSUE DATE:

May 31, 2011



PL110062

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

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Manfred May
Subject: By-law No. 2010-161
Municipality: City of North Bay
OMB Case No.: PL110062
OMB File No.: PL110062

APPEARANCES:

Parties

Counsel*/Agent

City of North Bay

M. Burke*

Nicholas Rizzo et al.

R. Miller

Manfred May

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON ON
MAY 16, 2011 AND ORDER OF THE BOARD**

Background

Mr. N. Rizzo et al. ("Applicant") applied to the City of North Bay ("City") to rezone a 0.5654 ha property located at municipal address 681 Commercial Street ("subject property") from "Residential Multiple First Density" (RM-1) to "General Commercial Outer Core Special Zone" (C-2 sp.).

Matter before the Board

Mr. M. May appealed the December 13, 2010, decision of the City Council approving Zoning By-law 2010-161, which amends Zoning By-law 28-80.

Evidence & Analysis

Ms B. Hillier, the Manager of Planning Services for the City of North Bay, was qualified by the Board to present opinion evidence on land use planning.

Ms Hillier stated that the subject property is currently occupied by an approximately 21,000 square foot (1,950 square metres) two-storey office building that has been occupied by various institutional users since 1909. In 1998, the current tenant, the North Bay District Health Unit established its operations in the building. The Board was told that the Health Unit requires more space and has recently renewed its lease, but this time on a short term basis. Although the site would appear to be large enough to accommodate the 50,000 square feet of office and related space required by the Health Unit, Ms Hillier explained that a lack of space for the necessary surface parking is the limiting factor. Accordingly, the Health Unit has begun its search for a new, somewhat larger site.

The Applicant explained that he seeks to normalize the zoning on the subject property so that it may be used as a private sector commercial office. While the current RM-1 zoning on the subject property allows institutional or public office uses such as government offices, schools and health clinics, it does not permit non-institutional and/or private office uses.

The surrounding uses include small retail and services as well as places of worship, schools, government offices and banking. The Caisse Populaire, a trust company, has a large office on the adjacent site to the south, which had previously been occupied by a Canadian Tire store.

Ms Hillier testified that the subject property is designated "Central Area" in the City's Official Plan ("OP"). This designation encourages a mix of residential, institutional, and commercial uses, while discouraging what she referred to as "suburban-type strip retail".

Mr. May, the Appellant, occupies a home at 381 First Avenue, which is immediately opposite the subject property. He testified that he is concerned that with the general commercial (C-2) zoning, the site will be used for strip retail. In response to a question from the Board, Ms Hillier again stated that the Central Area designation does not permit strip retail.

In explaining his opposition to the proposed site specific zoning by-law, Mr. May stated his opinion that an alternative kind of housing development that permitted home businesses would constitute a more harmonious fit with the neighbourhood homes on the opposite side of Commercial Street. Beyond a spirited disquisition in defence of this thesis, he presented no land use planning evidence.

Ms Hillier took the Board to Exhibit 2, Tab 9, which is the proposed Zoning By-law 2010-161. It indicates that several forms of residential are permitted. In other words, the proposed new zoning would not preclude future residential uses on the subject property, including home-based businesses.

She testified that the proposed by-law is consistent with the policies of the Provincial Policy Statement 2005 and conforms to the provisions of both the Official Plan and the general intent of Zoning By-law 28-80. She also stated under oath that the proposed site specific Zoning By-law 2010-161 represents good planning. The Board did not hear any conflicting or other land use planning evidence and therefore relies on and adopts Ms Hillier's testimony.

Disposition & Order

The Board Orders the appeal against the decision of the City Council to approve Zoning By-law 2010-161 amending Zoning By-law 28-80 is dismissed. Zoning By-law 2010-161 is therefore in full force and effect.

So Orders the Board.

"C. Hefferon"

C. HEFFERON
MEMBER