

ISSUE DATE:

October 31, 2011



PL110515

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: John Roberto
Applicant: 1660747 Ontario Limited
Subject: Minor Variance
Variance from By-law No.: 79-200 (amended by site specific By-law 2005-55 & 2005-196)
Property Description: McLeod Road (South Side) / East of 6080 McLeod Road
Municipality: City of Niagara Falls
Municipal File No.: A-2011/006
OMB Case No.: PL110515
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APPEARANCES:

Parties

1660747 Ontario Limited

City of Niagara Falls

John Roberto

Counsel

T. A. Richardson

K. Beaman

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ ON
AUGUST 25, 2011 AND ORDER OF THE BOARD**

This variance dispute has been settled. It had arisen after 1660747 Ontario Limited (the Applicant) applied for three variances concerning the edges of its proposed commercial project in the City of Niagara Falls (the City), in the Regional Municipality of Niagara (the Region). The Board numbers the variances, to City Zoning By-law 2005-55, as follows:

- #1.** To reduce part of its *rear yard* (at an angle), abutting residential neighbours to the south, to 12.13 metres, whereas the Zoning By-law calls for 18 metres;

- #2. To reduce the width of a *landscaped strip* along the *southern* boundary with the neighbours, to 1.22 metres whereas the By-law calls for 9.0 metres;
- #3. To permit *gaps in the landscaped strip* on the *west* side of the project, to permit vehicle access to the commercial property to the west (also owned by the Applicant).

City planning staff recommended against authorization. However, the Committee of Adjustment (COA) authorized the variances, subject to Conditions pertaining e.g. to the height of the commercial project. Mr. John Roberto (Neighbour), with the moral support of several other neighbours, appealed to the Board.

On the day of the hearing, the Applicant produced a new plan. It increased the proposed landscaped strip, thus reducing the scale of Variance #2. That topic, affecting the green buffer between properties, had appeared the most controversial. The proposed changes triggered discussion between the Parties.

Ultimately the Applicant, the City and the Neighbour were able to reach consensus on an approach involving still further modifications to Variance #2, as described in "Attachment 1" hereto.

The Board is satisfied that under Section 45(18.1.1) of the *Planning Act*, the change from the original application is sufficiently minor that it does not warrant re-circulation.

For variances, the criteria (often called "the four tests") are set out at Section 45(1), namely that a variance from the applicable By-law may be authorized if it is minor, desirable for the appropriate development or use of the property, and maintains the general intent and purpose of both the Zoning By-law and of the Official Plan.

The Board has carefully considered all the evidence, notably the testimony of Mr. Alex Herlovitch, the City's Director of Planning. He opined that subject to the Conditions agreed, the variances (as now modified) do not now offend any of the four tests of the *Planning Act*, and represent good planning. On review, the Board agrees with that undisputed opinion.

THE BOARD ORDERS that the variances to Zoning By-law 2005-55 of the City of Niagara Falls are hereby authorized as follows:

#1. To reduce the minimum rear yard depth from 18 metres to 12.13 metres, subject to the following Condition:

- That any building on the subject property shall be limited to one storey.

#2. To reduce the landscaping strip, parallel to and along the rear lot line, from 9 metres to 4.5 metres, subject to the following Conditions:

- a) The landscaping strip, parallel to the rear lot line, shall measure 5 metres on the west side of the parcel proposed to be developed (being 63 metres in horizontal width), which landscaping strip tapers to 4.5 metres on the east side of the said parcel proposed to be developed, as shown on the detail attached hereto as Attachment "1".
- b) The landscaping, to be installed, shall be to the satisfaction of City Council, whose approval will include involvement of the area residents.
- c) The landscaping will be subject to a Site Plan Agreement, to be entered into by the Owner of the subject property with the City.
- c) The existing vegetation will be maintained in accordance with the Arborland Report dated June 9, 2011, filed with the City.

- #3.** To reduce the landscaping strip parallel to and along the westerly interior side lot line, by providing gaps where no landscaping is proposed, as shown on the detail attached hereto as Attachment "1".

The above variances are all subject to the further Condition that the zoning of the balance of the subject lands, being that part of the subject lands lying to the east of a line drawn from north to south parallel to the westerly boundary of the subject lands and approximately 63 metres there from throughout its length, shall remain as established by City Zoning By-law 79-200 as amended by Zoning By-laws 2005-55 and 2005-196.

It is so Ordered.

"M. C. Denhez"

M. C. DENHEZ
MEMBER

