

ISSUE DATE:

November 28, 2012



PL120227

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

Melody Vahrmeyer has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to Zoning By-law 79-200 of the City of Niagara Falls to rezone lands respecting 8417-8443 Willoughby Drive to a site specific Residential Mixed (R3) zone to permit the land to be developed for single detached, semi-detached and/or on-street townhouse dwellings
OMB File No. PL120227

APPEARANCES:

Parties

Melody Vahrmeyer

City of Niagara Falls

Counsel

Sara Premi

Ken Beaman

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

[1] Melody Vahrmeyer (the "Applicant") is seeking the Board's approval of a proposed amendment to Zoning By-law No. 79-200 that would rezone the subject property from Institutional (I) to Residential Mixed (R3). If approved, the site-specific zoning would permit the site to be developed for single detached, semi-detached and/or on-street townhouse dwellings (four to five residential units in total are proposed) on these lands known municipally as 8417-8443 Willoughby Drive. The City of Niagara Falls ("City") refused the amendment.

[2] Counsel Ms. S. Premi represented the Applicant. Ms. Premi brought three witnesses to the hearing: planner Mr. J. Perry, whom the Board qualified to provide professional land use planning evidence and his expert opinion and two City witnesses who appeared under summons – planner Mr. K. Mech and Ms. M. Carrick, City Manager, Transportation Services.

[3] Counsel Mr. K. Beaman represented the City. Although under instructions from the City to oppose the proposed amendment, the City brought no planning witness to the hearing and Mr. Beaman did not call any planning evidence. Mr. Beaman called one witness, however; Mr. G. Holman, the Director of Municipal Works for the City, to provide evidence on the City's initiative to deal with infrastructure investment in the area.

[4] Ms. B. Carson-Toth, a next door resident, was granted interested participant status to speak in opposition to the proposed amendment. Her main issues were with traffic and water. She explained that there have been many vehicular accidents along the stretch of Willoughby Drive in front of her property and in front of the subject property. She said people drive too quickly and carelessly along Willoughby Drive and the addition of four driveways on this curve in the road will make the situation more dangerous. Secondly, she said the subject property is two feet lower than her property and there are issues of ponding on site, making development of this wet site very difficult. She said several ideas for development have been suggested but none pursued. She noted that the nearby church had purchased the land to be used for church parking but the land has never been developed.

[5] The Board reviewed Mr. Perry's November 2011 Planning Impact Assessment (Exhibit 1, Tab 7). The subject property is located in the south part of the City in the Chippawa Planning District. The property is located within the urban boundary and although encompassed by the City's Residential designation of this neighbourhood, the Zoning By-law zones the subject land Institutional (I). The land is vacant but it is serviced municipally. Single detached dwellings are found on either side of the subject property and there are duplexes and semi-detached dwellings located across the street. These built forms as well as fourplexes are found throughout the neighbourhood.

[6] Mr. Perry opined that the proposed amendment is consistent with the 2005 Provincial Policy Statement, which states in policy 1.1.3 that Settlement Areas (Urban Areas) shall be the focus of growth and that land use patterns shall be based on the

efficient use of infrastructure and public services. The Board observed that allowing residential use of the property for single family, semi-detached or townhouse dwellings will not require any additional municipal services and represents an efficient use of municipal infrastructure. He opined that 2006 Growth Plan, arising from the *Places To Grow Act* of 2005, encourages intensification and redevelopment in this Built-Up Area. He added that the Regional Municipality of Niagara Official Plan designates the subject land as “Urban Area”, which permits a variety of residential, commercial and industrial uses. Development of a type that this Applicant proposes for the subject property is permitted.

[7] In terms of the City’s Official Plan, the proposed uses are permitted. Policy 1.7.1 indicates that single detached and semi-detached dwellings are permitted along local streets at a density of 25 units per hectare. The site has an area of 0.188 hectares. Four units would create a density of only 21.2 units per hectare. Policy 1.7.2 encourages townhouses along collector roads like Willoughby Drive at a density of 50 units per hectare. Mr. Perry opined that the proposed land use meets the general intent and purpose of the Official Plan. Even though the Applicant’s proposed semi-detached and one single detached dwelling concept plan (among several found in Exhibit 1, Tab 3) would exceed the density guideline of 25 units per hectare by 1.5 units (26.5), the planner said the proposal complies with the mix of land uses contemplated in the Official Plan’s Residential designation for the area. The Board also heard evidence that the much larger open space to the west of the subject property received rezoning approval in 2003 to permit the construction of 32 townhouse units. He added that what the Applicant proposes to construct would simply constitute a further mix of townhouses

[8] Mr. Perry added that the concept plans meet the provisions of the Zoning By-law in terms of setbacks as well. It is interesting to the Board that the Applicant is requesting that the zoning for the property be changed to Residential Mixed through this site-specific amendment, which would permit only three types of built form dwellings for the subject lands – single detached, semi-detached and townhouses, whereas the City’s broader Residential Mixed (R3) zoning actually permits a wider array of built forms than

proposed. It is evident that the Applicant has reduced the options available to her and scaled down her plans from the possibly more intensive uses that might be permitted in the broader permissions of the City's zoning designation.

[9] City planner Mr. Mech adopted the evidence of Mr. Perry and explained that City staff had recommended approval of the amendment to support the townhouse dwelling concept plan. He added that if the Applicant proceeded with the townhouse concept plan, this would require a future severance application to divide the large property into parcels. Mr. Mech advised the Board that planning staff could support the severance because the proposed dwelling type is permitted in the Official Plan and the land is located on a collector road. The site can accommodate a modest increase in density and the proposed townhouse form of development is compatible with the current built forms that are found in the area.

[10] Mr. Perry concluded his presentation by opining that the proposed amendment to the Zoning By-law represents good land use planning and is in the public interest.

[11] The Board learned that Transportation Services suggested in its comments on the proposed amendment that if townhouses are to be built, the front yard setback from the road should be nine metres to improve visibility on the curve ("assist in providing sight lines to the driveways south of the proposed development"). There is sufficient room on this deep site to locate the dwellings back from the customary 6-metre distance. This latter point was the only comment of concern expressed by the various commenting agencies (listed on pages 22-23 of Tab 4 in Exhibit 1).

[12] The Board reviewed the Transportation Services Report on the subject property (Exhibit 1, Tab 6) and noted that despite the interested participant's comments, "Safety measures previously implemented at the Willoughby Drive curve has [*sic*] significantly reduced the collision frequency. No further measures are recommended."

[13] Ms. Carrick told the Board that City Council directed staff to carry out a traffic review in this area in response to the proposed zoning by-law amendment application.

The methodology for the staff's work was explained to the Board. It included conducting speed studies, a collision history review, sight line review, traffic volume data collection, a review of existing signs and staff's general site observations. The report details the various signing and marking improvements that have been implemented on this section of Willoughby Drive to mitigate collisions caused by drivers not negotiating the curve at a safe speed. The Board also reviewed the 10-year collision history data and notes that the frequency of collisions has been reduced significantly after the application of a number of mitigation measures in 2005. Between 2006 and 2011, only two accidents were reported. Prior to that time, there had been 12 reports. The Board accepts as persuasive Ms. Carrick's evidence that the road is safe and with the increased setbacks for the townhouses from 6 metres to 9 metres, Transportation Services has no concern with the proposed amendment.

[14] As for the matter of ponding on the site and drainage, the Board accepts the evidence of the interested participant that this is a wet site. Mr. Perry explained, however, that the development of the site would require the Applicant to enter into a development agreement with the City to address all servicing and grading and to submit a satisfactory grading plan prior to the issuance of a building permit. Mr. G. Holman, the City's Director of Municipal Works, echoed these comments and he provided additional information on the incidents of basement flooding and surcharging during intense rainfall events that have been occurring in the Chippawa area of the City. Chippawa has a problem with ground water conditions. When the land saturates, water gets into the weeping tiles and discharges in a manner that requires emergency sewage pumping. Mr. Holman explained that the City has been implementing initiatives to achieve wet water flow reductions in Chippawa (such as the design and construction of new storage tanks and he cited the City's proposed plan will invest some \$9 million investment in the sewer system (Exhibit 1, Tab 4). In his opinion, there is sufficient capacity for the proposed development. After examining the interested participant's photographs of the subject property Mr. Holman stated that the water appears to be runoff from adjacent properties and surface drainage. It is not back-up and is caused

because it is a low-lying site, which he offered can be corrected with the Applicant's submission of a master grade control plan when the proposed development is finalized. He added that lot grading can also serve as a condition for the City's approval of the site's future severance is sought.

[15] In the Board's view, the uncontradicted evidence of all of the expert witnesses is highly persuasive in support of the zoning by-law amendment. This application is characterized appropriately as a residential infill application that is encouraged and supported by the upper-tier and local planning instruments as detailed. The traffic and water issues were addressed satisfactorily for the Board.

ORDER

[16] Accordingly, having considered all of the evidence, the Board allows the appeal and amends Zoning By-law No. 79-200 with the Zoning By-law Amendment found at Tab 13 of Exhibit 1.

"R. Rossi"

R. ROSSI
MEMBER