

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 18, 2014

CASE NO(S).: PL130323

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Friends of the Lundy's Lane Battlefield
Appellant:	Janice Wing
Subject:	By-law No. 2013-24
Municipality:	City of Niagara Falls
OMB Case No.:	PL130323
OMB File No.:	PL130323

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Friends of the Lundy's Lane Battlefield
Appellant:	Janice Wing
Subject:	By-law No. 2013-26
Municipality:	City of Niagara Falls
OMB Case No.:	PL130323
OMB File No.:	PL130324

Heard: October 31, 2014 by telephone conference call

APPEARANCES:

Parties

Counsel

City of Niagara Falls ("City")

M. Joblin

Morse & Son Ltd. ("Morse")

M. DiGirolamo

Friends of the Lundy's Lane
Battlefield ("Friends")

T. Richardson/P. Maloney

Janice Wing

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON
OCTOBER 31, 2014 AND ORDER OF THE BOARD**

INTRODUCTION

[1] On June 26, 2014, the Board issued its decision dealing with all the issues set out in the Procedural Order, and allowed the appeals in part by the Friends and Janice Wing against two zoning by-laws of the City: namely Nos. 2013-24 and 2013-26.

[2] Zoning By-law No. 2013-14 sought to rezone the former school building and some surrounding lands to permit the conversion to a 30 unit apartment building with reduced parking.

[3] Zoning By-law No. 2013-26 sought to rezone the eastern portion of the former school playground to General Commercial to enable parking (for Morse).

[4] The Board decision of June 26, 2014 directed that revised by-laws be provided to the Board. Zoning By-law No. 2013-24 was to be revised so as to “shrink wrap” the existing school building, and Zoning By-law No. 2013-26 was to be revised restricting the use to parking and making a reservation for a pedestrian linkage, all of which was contingent on a Holding provision for a Stage 3 Archaeological Assessment to the satisfaction of the Minister of Tourism, Culture, and Sport.

[5] The Board decision of June 26, 2014 was the subject of a review request by Ms. Wing pursuant to s. 43 of the *Ontario Municipal Board Act*, which review request was denied by the Chair of the Ontario Municipal Board.

[6] Thereafter, the City circulated to the parties, two draft by-laws to implement the decision of the Board, but the draft by-laws were not to the agreement of the Friends.

[7] Counsel for the Friends had outstanding concerns with the two draft by-laws, and wrote to the Board on October 3, 2014, outlining concerns on both zoning by-laws, with

proposed recommended drafting revisions. In view of the outstanding impasse between the parties, the Board heard the matter by way of telephone conference call on October 31, 2014.

DECISION

[8] Following the review of the written submissions of the Friends and upon hearing from the parties, the Board directed the following.

[9] Firstly that the City should revise Zoning By-law No. 2013-24 to attach a diagram illustrating the existing building structure including heights. The basis for this is found in the Board decision of June 26, 2014 at paragraph 23: "The first zoning by-law will "shrink wrap" the existing former school building so as to alleviate any concerns that the existing building may be increased in height or mass." While the Board decision noted that the "shrink wrapping" could be done either diagrammatically or by description, the Board finds that to describe the former school building in the draft by-law as ... "being within the limits of the building existing on June, 26, 2014"... without reference to actual height and actual setbacks, does not achieve this direction for future users and readers of the by-law. Hence, a diagram is necessary.

[10] Secondly with regards to Zoning By-law No. 2013-26, concern was raised by the Friends that the proposed wording of the by-law would enable a parking garage to be erected, and also that the holding provision wording needed to be revised.

[11] The Board heard from counsel for Morse that only parking (at grade) was intended (with a pedestrian walkway), that there was no intent of building on the lands, but that the drafting of the by-law was clear enough.

[12] The Board directed that the City revise the draft by-law to include provision that no building be erected on the lands. Such direction does not include landscaping provisions such as fences, or lamp posts or other such necessary structures so as to enable the pedestrian walkway.

[13] With regard to the holding provision, the draft by-law required a Stage 3 Archaeological Assessment to the satisfaction of the Minister of Tourism, Culture and Sport, and the Board finds that wording to be appropriate.

[14] Ms. Wing sought to have the Board reconsider the reduced parking for the 30 unit apartment building. This matter was dealt with in the Board's original decision of June 26, 2014, and could have been raised by Ms. Wing in her section 43 review request. The Board will not consider it now.

[15] Thus the City shall revise the two draft by-laws accordingly and provide them to the Board.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

Ontario Municipal Board

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