

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 9, 2014

CASE NO(S): PL131214

Norman and Johanne Duguay have 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 or neglect to enact a proposed amendment to Zoning By-law No. 79-200 of the City of Niagara Falls to rezone lands respecting 7712 Badger Road and part of 7720 Badger road from Residential Single Family 1D Density (R1D) zone to Residential Low Density, Grouped Multiple Dwellings (R4) zone to permit the development of up to 14 townhouse and/or semi-detached dwelling units
OMB File No. PL131214

APPEARANCES:

Parties

Counsel

Norman and Johanne Duguay

Rocco Vacca

City of Niagara Falls

Ken Beaman

HEARING EVENT INFORMATION:

Hearing:

Held in Niagara Falls, Ontario on June 2, 2014

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

[1] The Applicants are requesting a rezoning of their property in the City of Niagara Falls ("City") to permit the development of up to 14 townhouse and/or semi-detached dwelling units on the lands known as 7712 Badger Road and part of 7720 Badger Road.

[2] Zoning By-law No. 79-200 zones the subject property Residential Single Family 1D Density (R1D) and the proposed rezoning by means of a Zoning By-law Amendment ("ZBA") would change the zoning to a Residential Low Density, Grouped Multiple

Dwellings (R4) zone, with site-specific lot frontage, side yard width, lot coverage and the number of dwellings per lot regulations to meet the requirements for R4 zoning. The rezoning would also permit townhouse blocks of two units where normally three units are the minimum. To assist the Board, the Applicants provided a site plan that contemplates how the development might function with a private roadway and homes sited along it. A “T” design would facilitate internal garbage pick-up.

[3] City Council denied the application.

[4] The Applicants argue that residents’ concerns with rentals, traffic impacts and off-site drainage are either not planning related or will be addressed through conditions of draft plan of condominium approval.

[5] The City’s Director of Planning, Alex Herlovitch, appeared under summons. Mr. Herlovitch authored the Planning Recommendation Report recommending approval of the ZBA to City Council. Planner, John Perry, provided additional planning evidence recommending approval of the application and adopting the planning evidence of Mr. Herlovitch. The Board qualified both witnesses to provide their land use planning evidence and professional opinions in respect this matter.

[6] The property is located on the south side of Badger Road, which is designated as a collector road in the City of Niagara Falls Official Plan (“Official Plan”). There are single-family dwellings on either side of the two properties and a hydro transmission corridor to the immediate south. This is a stable residential neighbourhood comprised largely of 30 and 40-year-old, single-detached dwellings.

[7] The property is 1.6 acres in size and consists of two single-detached properties fronting onto Badger Road. The Applicants intend to retain the westerly house (which will retain its existing R1D zoning in order to maintain the stable street frontage and neighbourhood character whereas the second, easterly house will be razed in order to create the private driveway to service what is intended to be a condominium development comprised of townhouses.

[8] Mr. Herlovitch reviewed the technical requirements for development of the site in a manner that would meet the more intensive zoning of the property. From a technical standpoint, and referencing matters such as setbacks, lot coverage and street frontage, these are acceptable to the Board and no contradictory evidence was adduced from any participant.

[9] Neither Niagara Region nor any of the municipal commenting agencies expressed any objections to the development as envisioned. In its August 23, 2013 letter to a City Planner, Niagara Region wrote that the ZBA “will facilitate the development of the subject lands and supports intensification in the City’s Built-up Area.” The letter provides helpful direction related to development of the site, suggesting an Environmental Site Assessment (completed in May 2013 and showing no evidence of potential or actual contamination associated with the site), the filing of a Record of Site Condition (as the site will be moving to a more sensitive use – more intensive residential), a noise study (the site is some 500 metres from the Queen Elizabeth Way highway system), waste collection requirements and the inclusion of a Holding Zone provision to address land use compatibility and potential noise impacts to the satisfaction of the Region.

[10] Neither the City’s Engineering Services Department nor Niagara Falls Transit expressed concerns. And, in direct response to neighbourhood concerns, Transportation Services Department collected traffic data on Badger Road in 2013 and revealed that approximately 1,900 vehicles use Badger Road on a daily basis. The amount of additional traffic to be generated by the proposed development was a modest 125 additional daily trips for the site, well within the range for a collector road, in that it carries far less than its intended capacity of between 1,000 and 5,000 vehicles daily. City Transportation staff did not expect any reduced level of service on Badger Road with the proposed development and at 22 units per hectare (9 units per acre), which is low for a townhouse development and not much more than what staff anticipate with single-detached developments. The vast majority of this evidence was unchallenged and as for the traffic data itself, the Department’s evidence on this point was preferred to one participant’s anecdotal concern that the data might not be accurate.

[11] Mr. Herlovitch's planning evidence echoed what the Growth Plan, the Provincial Policy Statement 2005 ("PPS") and the Regional Official Plan expressed in their respective upper-tier policy regimes: in the case of the Growth Plan, "emphasis on intensification and optimizing the use of the existing land supply ..."; in the case of the PPS, "promoting efficient land use and development patterns" which "support strong, liveable and healthy communities..."; and in the case of the Regional Official Plan's Housing policy direction: that municipalities "provide for an appropriate range of housing types and densities required to meet projected requirements of current and future residents..." This proposal achieves the direction of the upper-tier instruments and achieves the Land Use policies of the City's Official Plan (and in particular the Section 1 – Residential policies (1.2, 1.3, 1.4, 1.5 and 1.6 for example). Of particular relevance is Policy 1.7, which reads: "Single detached housing will continue to dominate the character and identity of residential neighbourhoods, although an increasing demand for various types of multiple residential accommodations is recognized. The Board was shown two existing low-rise apartment buildings to the northeast of Badger Road and the Board heard that another application for a multi-unit building in the area has been made. Mr. Herlovitch was the only witness to reference the policy documents that guided the Board's assessment of the appropriateness of the proposed ZBA and Mr. Perry subsequently adopted all of Mr. Herlovitch's expert evidence.

[12] While counsel for the City, Ken Beaman, asked the Board to have regard for City Council's decision to turn down the Applicant's proposal, which the Board did in the course of its deliberations, the Board, nevertheless, is keenly aware that the reasons for City Council's decision should be based upon some planning rationale and/or evidence that demonstrates with clarity why the development should not proceed. This is not the case regarding this application, however. City planning staff was highly supportive of this proposal and its recommendation to City Council was to approve the ZBA with corresponding controls as evidenced in the Region's letter. Moreover, none of the commenting agencies and Niagara Region raised objections or concerns. Despite these facts, the project was turned down. On this basis, the only planning evidence

before the Board is that furnished by City planning staff, the City planner who appeared under summons and the Applicants' planner. In contrast, City Council provided no clear planning reasons for setting aside the aforementioned information and as such, the Board has chosen to allow the ZBA based on all of the aforementioned evidence. The decision of City Council in these circumstances was considered, but it was not supported by the facts of this case and the planning regime in place. The Board is persuaded that the planning evidence supports an amendment to By-law No. 79-200 for this development.

[13] A dozen neighbourhood residents attended the hearing and four of these expressed concerns with the intensity of the development, increased traffic to be generated, loss of privacy, drainage from the site in terms of stormwater run-off and servicing (sanitary, sewer and municipal water). A participant, whose property abuts that portion of the property where the private roadway will be created (at 7696 Badger Road), expressed concern that her property would be turned into a corner lot and that there is a greater risk of damage to her existing fence.

[14] It was stated several times at the hearing that most of these participants' concerns are appropriately addressed through the future site plan process; however, the Board provides the following information on at least some of these matters. As for the increased intensity of development (represented through a higher density zoning designation), the City Official Plan allows up to 50 units per hectare on a collector road like Badger Road for R4 zoning. The Applicants proposed to have 22 units per hectare, or 9 units per acre, which keeps the level of density low. The townhouses' privacy yards will offer rear yard setbacks similar to the setbacks of adjacent house forms.

[15] While the appearance of new townhouses abutting existing houses' rear yards will be a new condition for area residents, their lament over a perceived loss of privacy is a familiar one; however, like so many Ontario municipalities, this City is growing and no citizen can reasonably expect to stop intensification in an urban environment or expect that their yards and views remain protected from adjacent development particularly in areas where such development such as that proposed by the Applicants

is contemplated.

[16] As for the abutting neighbour at 7696 Badger Road, Sue Halliday, whose property the Board determines would be most impacted by the creation of a private roadway along the western edge of her property, Mr. Perry was very helpful in explaining the flexibility of the development of the site and observed that fencing and plantings can help to mitigate the road's presence just as the westerly movement of the roadway away from that property and a shifting of the visitor parking spaces can minimize the impact on Ms. Halliday's property. Although not within the Board's jurisdiction to order the change, the Board was pleased with the Applicants' conciliatory approach through their counsel and planner to consider the minimization of impacts on this participant's property.

[17] As for parking concerns, the Applicants have devised a proposal that responds well to the City planning staff's recommendation – one that flowed from earlier concerns related to the sufficiency of parking. Each new townhouse will enjoy garage and driveway parking and six visitor parking spaces will be provided. One participant said this was not sufficient, yet the evidence does not support such a statement given that the Applicants have proposed private garages and driveways and visitor parking, all of which will occur entirely on the property.

[18] As for drainage issues southward toward 7641 Charmwood Avenue and the impact of perceived increased water flow on a solitary catch basin, the Applicants' counsel, Rocco Vacca noted that a future site plan process could address this matter and he asked whether the Charmwood Avenue participant would like to see a stormwater management study.

[19] The Board determines that the participants' concerns were largely based on matters that can best be addressed through the future site plan process. None of the participants presented persuasive planning evidence that would cause the Board to question the appropriateness of the proposed ZBA in light of the overwhelmingly supportive planning evidence presented. The proposed scale of housing and the

intensity, as proposed, is deemed to be compatible with the surrounding land uses. The development is self-contained and the use as contemplated is a more appropriate one than the previous landscaping operation with various truck movements and the storage of soils and materials, which prompted the aforementioned Environmental Site Assessment. By extension, Mr. Perry, whose professional planning career has a solid foundation in this and neighbouring municipalities, presented anecdotal examples of similar developments (and in numbers and densities greater than this proposal) that other municipalities have approved and that exist harmoniously with single-family dwellings nearby. Like Mr. Herlovitch, Mr. Perry's expertise was persuasive to the Board.

[20] The Board determines that the proposed ZBA can be supported. It facilitates a type of development that is contemplated in the City and it achieves the Province's planning goals and the City's Land Use planning policies. It also represents good land use planning.

ORDER

[21] The Board allows the Applicants' appeal to permit a multiple unit residential development on the subject lands. The Board approves the ZBA, which modifies Zoning By-law No. 79-200 in the manner prescribed in Exhibit 1, Tab 21.

"R. Rossi"

R. ROSSI
MEMBER

Ontario Municipal Board

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