

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 20, 2018

CASE NO(S): PL170494

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	River Crest Corporation
Subject:	Application to amend Zoning By-law No. 79-200 – Refusal of Application by the City of Niagara Falls
Existing Zoning:	Development Holding (DH) zone
Proposed Zoning:	Residential Low Density, Grouped Multiple Dwellings (R4) zone (site specific)
Purpose:	To permit the development of a four storey, 32 unit apartment dwelling and a 19 unit block townhouse development
Property Address/Description:	2560 Mewburn Road
Municipality:	City of Niagara Falls
Municipality File No.:	AM-2016-019
OMB Case No.:	PL170494
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OMB Case Name:	River Crest Corporation v. Niagara Falls (City)

Heard: January 9 and 10, 2018 in Niagara Falls, Ontario

APPEARANCES:

Parties

River Crest Corporation

City of Niagara Falls

Counsel*/Representative

Thomas Hanrahan

Ken Beaman

DECISION DELIVERED BY J. V. ZUIDEMA

INTRODUCTION

Background

[1] River Crest Corporation (“River Crest”) applied to the City of Niagara Falls (“City”) to permit the development of a four storey, 32-unit apartment dwelling and a 19-unit block townhouse development.

[2] The application sought to amend the City’s Zoning By-Law No. 79-200 from a Development Holding (DH) zone to a site specific Residential Low Density, Grouped Multiple Dwellings (R4) zone. Site specific provisions would cover standards for lot area, side yard width, privacy yard depth, number dwellings on a lot and building height regulations.

[3] The property is located at 2560 Mewburn Road (“subject property”) in the City. This is situated at the southeast corner of Mountain Road and Mewburn Road and currently the site is occupied by a motel and single detached dwelling.

[4] City Council refused the application on or about March 28, 2017.

[5] River Crest appealed the decision under subsection 34(11) of the *Planning Act* stating that its application constituted infill development within the existing urban area. The City Planning Staff Report and the Planning Justification Report recognized the proposed development as good planning for a variety of policies in the Provincial Policy Statement (“PPS”), the Regional Official Plan and the City’s Official Plan.

[6] The City’s Planning Staff had no objections to the application, noting that the proposed development is a form of residential intensification promoted by the PPS; it conformed to the Official Plan, and the requested zoning amendments could be

supported. A servicing study will be conducted to address any identified sanitary and water servicing issues at the condominium stage.

[7] The Ontario Municipal Board (“Board”) conducted a Pre-Hearing Conference and per my colleague’s earlier Decision (which was issued on October 17, 2017) conferred Participant status to Francis Richard Andrews, Brian Donnelly, David Mason, and Anne Cruse. The hearing convened on January 9, 2018.

[8] At the outset of the hearing, the Board was advised that the City would not be calling a case. Counsel for the City asked that the Board have regard to the City Council’s earlier decision but no evidence was proffered to support the City’s opposition to the appeal.

[9] As such, I heard uncontested expert planning evidence in support of the appeal. Mr. Alex Herlovitch was qualified and accepted as an expert in land use planning. Mr. Herlovitch appeared under summons as he is the Director of the City’s Planning Department.

[10] Mr. Herlovitch provided his opinion, consistent with the position taken in the Staff Report which was before City Council, that the development was consistent with the infill policies of the PPS in that it was a good use of existing public infrastructure and the subject property was an underutilized parcel.

[11] Mr. Herlovitch described the history and context of the proposal. The proposal before me had been revised to address some of the concerns raised by neighboring property owners and the City’s comments. Mr. Herlovitch explained that following City’s Council’s decision to refuse, he was involved with River Crest and the neighbors to try to find a resolution.

[12] Mr. Herlovitch was thorough and methodical in his review and opinion in support of the revised proposal. He also answered all of my questions and I relied upon his uncontroverted evidence to provide an oral decision at the conclusion of the hearing.

[13] I also heard from Mr. Steven Rivers, who was also qualified and accepted as an expert in land use planning. Similar to Mr. Herlovitch, Mr. Rivers testified in support of the proposed development. Mr. Rivers explained how the changes were made to development proposal in order to address City Council's concerns.

[14] Mr. P. Leigh Whyte, also a professional planner but not qualified as such, provided evidence concerning the background and history of the proposal.

[15] Finally I also heard from Ms. Anne Cruse, one of the Participants noted above. Ms. Cruse's testimony was in support of the revised proposal and she indicated she was speaking on behalf of the residents of Condominium Corporation #57 located in the vicinity of the subject property.

[16] Based on the evidence of these witnesses, I provided an oral decision allowing the appeal in order to approve the revised development. Because the parties required some time to finalize the condominium plan and the site plan, I was asked jointly to withhold the Board Order until those applications had been completed.

[17] The parties are directed to contact the Board's Case Coordinator to advise when those applications have been finalized. The Board can be contacted to assist should any difficulties arise in the interim.

[18] Therefore the appeal is allowed but the Board's Order is withheld. It can be released once the Board is advised that the condominium and site plans have been finalized.

“J. V. Zuidema”

J. V. Zuidema
VICE-CHAIR

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Ontario Municipal Board

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