

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: May 08, 2019

CASE NO(S): PL170494

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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
OMB File No.:	PL170494
OMB Case Name:	River Crest Corporation v. Niagara Falls (City)

Heard: April 26, 2019 by telephone conference call

APPEARANCES:

Parties

Counsel

River Crest Corporation

T. Hanrahan

City of Niagara Falls

T. Halinski

**MEMORANDUM OF ORAL DECISION DELIVERED BY C.J. BRYSON ON
APRIL 26, 2019 AND ORDER OF THE TRIBUNAL**

[1] This hearing took place in follow-up to the Decision of the Tribunal of February 20, 2018, in which the Appeal of River Crest Corporation from the City of Niagara Falls' refusal to approve its application for a zoning by-law amendment to permit a residential development at 2560 Mewburn Road was allowed. At that time, the Parties requested the Tribunal withhold its final order on the Appeal pending finalization of the site and condominium plans for the development.

[2] At this telephone conference call ("TCC"), the Parties jointly requested the Tribunal issue a final order on the Appeal. They informed the Tribunal that the site plan was close to finalization but that neither the site plan nor the condominium plan could be finalized without a final order on the zoning by-law amendment Appeal. The site plan would now be approved upon receiving the final order of the Tribunal and the condominium plan would be finalized once the project was constructed.

[3] In support of the request for a final order on the Appeal, the Parties provided the Tribunal with the Affidavit of Leigh Whyte, which was marked as Exhibit 1 and supports the submissions of the Parties that it constitutes good planning to approve the amendment while awaiting final approval of the site and condominium plans. The Tribunal accepted the qualifications of Mr. Whyte for purposes of providing the Tribunal with expert land use planning opinion evidence. The Parties requested the Tribunal approve the final draft zoning amendment by-law found at Exhibit B to the Affidavit of Mr. Whyte, which is attached to this Decision as Attachment 1, and to dispose of the Appeal on this basis.

[4] Against this background, the Tribunal ordered the Appeal be allowed in part and that the City of Niagara Falls Zoning By-law No. 79-200 be amended per Attachment 1 to this Decision and Order.

"C.J. Bryson"

C.J. BRYSON
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

CITY OF NIAGARA FALLS

By-law No. 2019-

A by-law to amend By-law No. 79-200, to permit a townhouse dwelling and a 4 storey apartment dwelling on the Lands (AM-2016-019).

THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:

1. The Lands that are the subject of and affected by the provisions of this by-law are described in Schedule 1 of this by-law and shall be referred to in this by-law as the "Lands". Schedule 1 is a part of this by-law.
2. The purpose of this by-law is to amend the provisions of By-law No. 79-200, to permit the use of the Lands in a manner that would otherwise be prohibited by that by-law. In the case of any conflict between a specific provision of this by-law and any existing provision of By-law No. 79-200, the provisions of this by-law are to prevail.
3. Notwithstanding any provision of By-law No. 79-200 to the contrary, the following uses and regulations shall be the permitted uses and regulations governing the permitted uses on and of the Lands.
4. The permitted uses shall be the uses permitted in a R4 zone.
5. The regulations governing the permitted uses shall be:
 - (a) Deemed lot the whole of the Lands shall be considered one lot
 - (b) Deemed front lot line the lot line abutting Mewburn Road shall be considered the front lot line
 - (c) Minimum lot area 175 square metres for each dwelling unit
 - (d) Minimum rear yard depth
 - (i) for a townhouse dwelling 6 metres
 - (ii) for an apartment dwelling 87 metres

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|-----|---|--|
| (e) | Minimum interior side yard width | |
| | (i) for a townhouse dwelling from the south side lot line | 28 metres |
| | (ii) for an apartment dwelling from the south lot line | 18 metres |
| | (iii) for a porte cochere of an apartment dwelling from the south lot line | 11 metres |
| | (iv) for a townhouse dwelling or apartment dwelling from all other side lot lines | 9 metres |
| (f) | Minimum exterior side yard width | |
| | (i) for a townhouse dwelling | 6 metres |
| | (ii) for an apartment dwelling | 7.5 metres |
| (g) | Maximum height of building or structure | |
| | (i) for a townhouse dwelling | 10 metres, subject to section 4.7 of By-law No. 79-200 |
| | (ii) for an apartment dwelling | 16 metres, subject to section 4.7 of By-law No. 79-200 |
| (h) | Minimum landscaped open space | 50% of the lot area |
| (i) | Minimum privacy yard for each townhouse dwelling unit, as measured from the exterior rear wall of every dwelling unit | 6 metres |
| (j) | The balance of regulations specified for a R4 use | |
6. All other applicable regulations set out in By-law No. 79-200 shall continue to apply to govern the permitted uses on the Lands, with all necessary changes in detail.
7. No person shall use the Lands for a use that is not a permitted use.
8. No person shall use the Lands in a manner that is contrary to the regulations.

9. The provisions of this by-law shall be shown on Sheet B2 of Schedule "A" of By-law No. 79-200 by redesignating the Lands from DH to R4 and numbered 1058.
10. Section 19 of By-law No. 79-200 is amended by adding thereto:
19.1.1058 Refer to By-law No. 2019-_____.

Passed this day of , 2019.


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WILLIAM G. MATSON, ACTING CITY CLERK

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JAMES M. DIODATI, MAYOR

First Reading:
Second Reading:
Third Reading:

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SCHEDULE 1 TO BY-LAW No. 2019-

Subject Land: 



Amending Zoning By-law No. 79-200

Description: Pt Twp Lt 26 Stamford; Pt Twp Lt 35 Stamford as in RO718521
Except Part 4 on Reference Plan 59R-14223, Except the Easement therein;
Niagara Falls; Pt Twp Lt 26 Stamford; Pt Twp Lt 35 Stamford
Parts 3 & 4 59R-9981; Niagara Falls; Pt Twp Lt 26 Stamford;
Pt Twp Lt 35 Stamford as in RO405335; City of Niagara Falls

Applicant: Rivercrest Corporation Inc

Assessment #: 272504001606600; 272504001605600; Part of 272504001606700