

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



ISSUE DATE: December 06, 2019

CASE NO(S):

PL180889

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 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	2581576 Ontario Inc.
Subject:	Minor Variance
Variance from By-law No.:	79-200
Property Address/Description:	5881 Thorold Stone Road
Municipality:	City of Niagara Falls
Municipal File No.:	A-2018-031
OMB Case No.:	PL180889
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OMB Case Name:	2581576 Ontario Inc. v. Niagara Falls (City)

Heard: March 26, 2019 in Niagara Falls, Ontario

APPEARANCES:

Parties

Counsel/Representative*

2581576 Ontario Inc.

Ping Zhang*

City of Niagara Falls

Tom Halinski

DECISION AND ORDER OF THE TRIBUNAL DELIVERED BY JOHN DOUGLAS

BACKGROUND

[1] 2581576 Ontario Inc. (the “Applicant/Appellant”) has applied to vary the permitted uses at 5881 Thorold Stone Road (the “subject site”) to permit a health centre to be added to the list of permitted uses allowed under the City of Niagara Falls (the “City”) Zoning By-law 79-200 (“ZBL 79-200”) to allow the Niagara Falls Boxing Club to continue to operate at the subject site as it has for approximately 20 years.

[2] Tom Halinski submitted a Document Book on behalf of the City (filed and entered as Exhibit 1) and advised the Local Planning Appeal Tribunal (“Tribunal”) that the City was not taking a position at the hearing.

[3] Ping Zhang called John Pollock was called as a witness for the Applicant. Mr. Pollock was sworn in but not qualified as an expert witness.

[4] Ron Lavell, who lives at 3762 Sinnicks Avenue (abutting the subject site to the west), requested and was granted participant status.

The Subject Property and Proposal

[5] The subject site is a large irregular shaped parcel of land. There is an existing industrial building which occupies a large portion of the property. The boxing club/gym, which is recognized as a health centre, is located and has been operating within the south end of the existing industrial building for approximately 20 years.

[6] The subject site was the subject of a previous application to sever property from the north west corner of the site. This application was approved and is now the location of the Niagara Falls Sports Plex at 3710 Sinnicks Avenue. When City staff conducted a site visit regarding the application for the Niagara Falls Sports Plex, they became aware of the existence of the Niagara Falls Boxing Club and required the owner to submit an application for minor variance to permit the health centre use.

[7] There are single detached and townhouse residential units to the west of the subject site. To the north of the subject site is the Niagara Falls Sports Plex and just north of that are low density residential uses. To the east of the site is a large truck stop. To the south of the subject site are two car dealerships.

ISSUES

[8] When considering a minor variance, the Tribunal must consider the four-part test set out in s. 45(1) of the *Planning Act* (“Act”):

1. Does the variance maintain the general intent and purpose of the official plan?
2. Does the variance maintain the general intent and purpose of the zoning by-law?
3. Is the variance desirable for the appropriate development or use of the land?
4. Is the variance minor?

[9] The Tribunal must also determine whether the minor variances are consistent with the Provincial Policy Statement, 2014 (the “PPS”) and conform to the Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”).

[10] Since this matter was heard, the Growth Plan for the Greater Golden Horseshoe 2017 (the “Growth Plan”) has been replaced by the Growth Plan for the Greater Golden Horseshoe 2019. Ontario Regulation (“O. Reg.”) 311/06 addresses Transitional Matters with respect to the Growth Plan. Section 2.1(2) of the O. Reg. 311/06 states:

2.1(2) Where section 3 requires a matter to be continued and disposed of in accordance with the Plan and the matter was commenced before May 16, 2019, the requirement shall be read as a requirement that the matter be continued and disposed of in accordance with the 2017 Growth Plan as it read before its revocation if, on May 16, 2019, the Local Planning Appeal Tribunal or a joint board has completed its hearing of the matter but reserved its final decision.

[11] Having been heard on March 26, 2019, the Growth Plan 2017 applies in this matter.

[12] Based on the whole of the evidence inclusive of the documentary record and Exhibit 1 submitted by the City, the Tribunal finds the application is consistent with the PPS and conforms to the Growth Plan 2017.

ANALYSIS AND FINDINGS

General Intent and Purpose of the Official Plan

[13] Mr. Pollock referred the Tribunal to the City's Official Plan ("OP"), a copy of which was in the City's document book. He noted that the subject site is designated "Industrial" under Section 8.3 the City's OP which states that the primary uses in areas designated as industrial will be for industry. Under Section 8.3 industry is defined as manufacturing, recycling, warehousing, distribution, laboratory and research, and storage. Section 8.3 also states that the following uses, including those in Section 8.2.4 of the City's OP, may be permitted within industrial areas. Section 8.2.4 refers to Health and fitness facilities, conference centres and private clubs.

[14] The City's Planning Staff report, included in the City's document book, states that City Staff found that the proposed relief from the By-law maintains the general intent and purpose of the OP.

[15] Based on the uncontested evidence, the Tribunal finds that the proposed variance maintains the general intent and purpose of the OP.

General Intent and Purpose of the Zoning By-law

[16] Mr. Pollock noted that the subject site is zoned General Industrial (G1) under the City's Zoning By-law No. 79-200. The Planning Report in the City's Document Book states that the G1 zone does not permit recreational uses such as a health centre, and

that the health centre operating within the existing building at 5881 Thorold Stone Road for over 20 years has done so without zoning approval.

[17] The Planning Report notes that adequate parking is provided on the site to support the health centre use.

[18] The Planning Report states that health centre has been providing a service within the community for an extended period of time without causing any measurable impact and concludes that the variance to add the use is acceptable. The opinion of planning staff in the Report is that the proposed variance maintains the general intent and purpose of ZBL 79-200.

[19] Based on the uncontested evidence, the Tribunal finds that the proposed variance maintains the general intent and purpose of ZBL 79-200.

Minor and Desirable

[20] Mr. Lavell's concerns were primarily about drainage and parking. However, his concerns were related not just to the variance requested for the subject site but to the whole property of which the subject site is just a part. Based on his testimony, it appeared that Mr. Lavell's concerns were focused on newly introduced Sports Plex at the north end of the building. He was concerned about the parking for the Sports Plex and mentioned that a catch basin under the Sports Plex had collapsed which increased his concerns with respect to drainage.

[21] Mr. Pollock stated that the club has been there for years. It's affordable and meets a need within the community. He noted that there is ample parking.

[22] As noted in the Planning Report, the City's Planning Staff noted that the health centre has been providing a service within the community for an extended period of time without causing any measurable impact. According to the report City staff were of the opinion that the variance was minor in nature and desirable for the appropriate use of

the property.

Summary

[23] The Staff Report concludes that the variance requested meets the four tests set out under s. 45(1) of the Act.

[24] Based on the uncontested evidence presented, the Tribunal finds that the proposed variance meets the four-part test pursuant to s. 45(1) of the Act.

CONCLUSION

[25] Upon the findings made, Mr. Pollock's evidence, and the whole of the evidence inclusive of the documentary record, the Tribunal finds that the proposed variance meets the four tests set out in s. 45(1) of the Act, is consistent with the PPS, conforms with the Growth Plan and any matters of provincial interest identified in the Act, and represents good planning in the public interest. For these reasons, the Tribunal will allow the appeal and authorize the variance.

ORDER

[26] The Tribunal orders that the appeal is allowed and the variance to permit a "health centre" to be added to the list of permitted uses allowed in the G1 Zone for 5881 Thorold Stone Road under the City's By-law 79-200 is authorized.

"John Douglas"

JOHN DOUGLAS
MEMBER

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Local Planning Appeal Tribunal

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