

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: April 26, 2024

CASE NO(S): OLT-23-001106

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: Butler's Garden Development Inc.

Subject: Request to amend the Official Plan – Failure to adopt the requested amendment

Description: OPA-To permit an 11.82-metre high (three-storey), 17-unit residential apartment with 18 parking spaces

Reference Number: OPA-04-2023

Property Address: 727 & 733 King Street

Municipality/UT: Niagara-on-the-Lake/Niagara

OLT Case No.: OLT-23-001106

OLT Lead Case No.: OLT-23-001106

OLT Case Name: Butler's Gardens Development Inc v. Niagara-on-the-Lake (Town)

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

Applicant/Appellant: Butler's Garden Development Inc.

Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision

Description: ZBA- 3-Storey Apartment Building with 17 Residential Units and 22 Parking Spaces

Reference Number: ZBA-13-2023

Property Address: 727 & 733 King Street

Municipality/UT: Niagara-on-the-Lake/Niagara

OLT Case No.: OLT-23-001107

OLT Lead Case No.: OLT-23-001106

Heard: February 28 – March 1, 2024, by Video Hearing

APPEARANCES:**Parties****Counsel/Agent***

Butler's Garden
Development Inc. (Appellant
/ Applicant)

Tom Hanrahan, Andrea Mannell,
Sarah Wilcox (Student-at-Law)

Town of Niagara on-the-
Lake ("Town")

Callum Shedden, Alexander Hobbs

DECISION DELIVERED BY K.R. ANDREWS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This is an appeal by Butler's Garden Development Inc. ("Appellant"). The appeal arises following a non-decision by the Town concerning applications for an Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA") to permit a three-storey, 17-unit residential apartment building (resulting in a density of 53 units per hectare) between 727 and 733 King Street. Since the filing of the appeal, Town staff recommended approval of the subject Applications; however, the Town has nevertheless elected to oppose the Applications at the present hearing.

[2] The proposed OPA purports to redesignate the lands from "Low Density Residential" to an "EX-RES" residential exception designation. The residential exception designation proposes that the lands be subject to requirements of the "Medium Density Residential" designation of the Town Official Plan ("Town OP"), plus site-specific policies to permit the apartment building, as proposed, on the subject site. More specifically, the proposed exceptions would allow for:

1. Increased density – seeking permission for 53 units per hectare (to accommodate the proposed 17-units), whereas current Town OP policies for intensification require that medium density residential developments not exceed a maximum density of 30 units per hectare;

2. Orientation of front entrance and parking location – seeking permission to locate surface parking to the side and partially to the front of the building, with the front entrance facing the side parking area, whereas current Town OP policies require parking for such a new residential development to be located at the rear of the building, with the principal entrance fronting onto the street and a secondary entrance at either the side or to the rear of the building; and
3. Locating the building on a local street – seeking permission to locate the building on a local street, whereas the current Town OP polices state that traffic to and from a medium density residential use will not be directed towards local streets (noting King Street becomes a collector road approximately 430 metres north of the Subject Lands, which is the direction that traffic will be directed given that King Street features a dead end in the other direction).

[3] The proposed ZBA, meanwhile, purports to rezone the lands from a “Residential (R1) Zone” to “Residential Multiple (RM1) Zone” with site-specific provisions related to lot frontage, amenity area and fencing.

[4] The Town’s opposition to the subject Applications is generally concentrated on compatibility concerns, and more specifically upon such concerns associated with height, density, character, and built form (in terms of the proposed building being an apartment building). The Tribunal understands that such concerns have been and continue to be similarly expressed by area residents, including the Participants of this matter.

[5] From the Town’s perspective, the proposed applications should be denied for failing to have due regard for applicable matters of provincial interest, as well as a lack of consistency/conformity with certain aspects of provincial and municipal policies related to compatibility. Put another way, the Town argues that the proposed development, being a three-storey, 17-unit apartment building, does not ‘fit’ within the surrounding established low-density neighbourhood.

[6] However, at the same time, it is generally acknowledged, including by the Town, that the proposed development supports provincial interests, as well as provincial and municipal policies, associated with providing an adequate supply, mix and range of housing options. Nevertheless, the Town takes the position that if the proposed development is not compatible, then it does not satisfy the requisite legislative tests and the applications should be denied.

[7] From the Applicant's standpoint, the benefits of providing a greater supply, mix and range of housing options outweigh any compatibility concerns. Just the same, the Applicant generally acknowledges that the proposed development is dissimilar (albeit adequately compatible) from the otherwise relatively homogeneous surrounding residential neighbourhood.

[8] On this point, there is no debate that the immediate surrounding residential neighbourhood does not feature any apartment buildings, with the closest similar apartment building being just within a one-kilometer radius at 61 Paffard Street – and even that building involves less density per hectare than what is currently being proposed. Nevertheless, the Applicant takes the position that, when conducting a balancing exercise of policy considerations, the Town's obvious need for a greater supply, mix and range of housing options in the area tips the balance in favour of approving the development.

PRELIMINARY MATTERS

[9] As this is the first hearing event of the matter, the Tribunal was obliged to conduct a number of case management tasks at the outset of the hearing.

[10] Firstly, the Tribunal confirmed that the Notice of the hearing was properly served and marked the Affidavit of Service as **Exhibit 1**.

[11] Secondly, the Tribunal dealt with Participant Status requests from Endre Mecs, Jason Quesnelle, Patrick Gedge. All three individuals confirmed that they are area residents and, as such, the Tribunal found that they have a direct interest in the matter. On this basis, the Tribunal granted each of them Participant status.

[12] At the same time, however, the Tribunal received and reviewed the materials that each of them purported to submit as their respective “Participant Statements”. Upon review, the Tribunal found that their materials went far beyond mere statements, and included attachments that are akin to tendering evidence. Mr. Mecs’ materials totalled 265 pages with 24 annexes, Mr. Quesnelle’s materials totalled 19 pages and included two letters from other people, while Mr. Gedge’s materials totalled 40 pages and included two appendixes.

[13] With these materials before it, the Tribunal asked the parties for submissions on the acceptability of the participants’ respective materials. Counsel for the Appellant argued that the Participants should not be permitted to submit materials which amount to evidence because it would be patently unfair to put evidence before the Tribunal with no opportunity for the parties to test it through cross-examination. On this point, the Tribunal comes to the same conclusion, noting that s. 17 of the *Ontario Land Tribunal Act* puts a statutory limit on non-party (i.e. Participant) participation, insofar as it permits only written “submissions” (i.e. not evidence).

[14] Upon this finding, the Tribunal instructed the participants to revise their materials into the form of a five-page written statement, with no attached evidence, to be served and filed before the end of the present hearing. The Tribunal now confirms that the Participants did so, and the Tribunal has subsequently reviewed and considered their statements.

WITNESSES

[15] The Tribunal heard from the following experts:

1. Aaron Butler – retained by the Applicant and duly qualified as an expert in Land Use Planning;
2. Aimee Alderman – Town staff, who testified under subpoena as called by the Applicant, and also duly qualified as an expert in Land Use Planning;

3. Emilio Raimondo – retained by the Applicant and duly qualified as an expert in Architecture and Shadow Impacts;
4. Mark Dorfman – retained by the Town and duly qualified as an expert in Land Use Planning.

EVIDENCE AND ANALYSIS

The applicable legislative tests and balancing approach re: competing policy interests.

[16] As acknowledged by the Town in its closing submissions, the Tribunal is obliged to follow the legislated directions provided at s. 3(5) of the *Planning Act* (the “Act”) with respect to both the OPA and ZBA Applications, and s. 24(1) of the Act with respect to the ZBA Application.

[17] S. 3(5) of the *Planning Act* requires that all decisions of the Tribunal, including with respect to the present OPA and ZBA appeals, shall:

1. Be consistent with the PPS; and
2. Conform with the Growth Plan, or shall not conflict with it, as the case may be.

[18] Meanwhile, s. 24(1) of the Act dictates that no By-law (including the present proposed ZBA) shall be approved by the Tribunal that does not conform with an applicable municipal Official Plan (in the present case, this includes the Town and Region OPs).

[19] On this subject, the Tribunal asked the parties for submissions on how, if at all, the Tribunal should conduct a balancing exercise when/if there are competing interests between various applicable provincial and municipal policies. In the present case, the Tribunal finds it obvious that competing interests exist between policies which support compatibility between the proposed development and the surrounding neighbourhood,

and those policies which otherwise support providing a greater supply, mix and range of housing options within the same surrounding neighbourhood.

[20] In response to the Tribunal's request, the Applicant submitted that all applicable policies are to be considered and balanced as a whole with respect to questions of consistency/conformity with planning instruments. In other words, while some policies may not be strongly supported by the proposed development (for example, those which encourage compatibility), it should not immediately be found to be inconsistent and/or fail to conform with the applicable planning instruments in an overall sense, when other policies (for example, those which promote providing a greater supply, mix and range of housing options) clearly support the development.

[21] The Town's response was different. In its written submissions, the Town stated:

[T]he tests set out in Sections 3(5) and 24(1) are separate and distinct.

[As it relates to the ZBA] there is no balance test – the development either conforms to the provisions of the OP or it does not. If the development is determined upon review of the OP policies that guide intensification, infill and urban design, not to be compatible with the existing residential neighborhood it can not be saved by reference to satisfaction of growth and intensification goals of the Growth Plan [pursuant to s. 3(5)(b) of the Act].

[N]o consideration should be given to satisfaction of Growth Plan policies when considering the test under Section 24 (1) of the *Planning Act*. [emphasis added]

[22] The Tribunal finds these submissions by the Town to be contrary to the Tribunal's long-standing approach to dealing with occasionally competing policy interests, insofar as the Tribunal routinely employs a balancing approach and no particular policy or policies necessarily trump all others. While the Tribunal recognizes that the Town made these submissions in the context of the ZBA application, The Tribunal finds that a balancing exercise applies similarly with respect to both ZBA and OPA applications.

[23] Furthermore, the Tribunal finds that the last statement quoted above is legally incorrect. The Act requires all decisions of the Tribunal to conform with the Growth Plan (or not conflict with it) pursuant to s. 3(5) of the Act. This clearly includes all decisions made in accordance with s. 24(1) of the Act. Consequently, the Tribunal finds that there

is no way to perform a conformity-analysis under s. 24(1) of the Act without concurrently performing a conformity-analysis under s. 3(5), and then balancing the results while considering all of the applicable policies as a whole.

[24] In summary, the Tribunal generally accepts the approach suggested by the Applicant, insofar as a balancing exercise shall take place to determine the present matter. The Tribunal further finds that, in the present case, such a balancing exercise shall principally consider policies encouraging an adequate supply, mix and range of housing options on the one hand, and compatibility issues on the other. To put a finer point on it, given that there is no earnest debate about whether the proposed development will serve to provide a greater supply, mix and range of housing options, the case principally rests on whether the proposed development is sufficiently compatible with the surrounding neighbourhood.

Compatibility

[25] The Tribunal heard evidence and submissions from the Town regarding compatibility and related perceived excesses in height and density, as well as ill-suited character and built form. The Town cited Town OP policy 6A-4.6 which speaks to compatibility of intensification development with surrounding existing land uses. On this point, Mr. Dorfman opined that:

- Compatibility is tested at the level of community character using density, form, mass, height and setback;
- Community character at the local scale is what you see when you are in your backyard or on the street walking around; and
- Community character for this neighbourhood is low rise, single detached and attached dwellings with peaked roofs.

[26] He further opined that this compatibility criteria is not met by the proposed development due to its built form, mass, density, setback and height. He went on to opine that apartments can be built in the Town, just not at this location because

apartments are not compatible with the local area. He further stated that apartments could be compatible on Niagara Stone Road in the Town, which is a Regional Road.

[27] Mr. Dorfman's opinions were tendered within the context of evidence showing that the surrounding neighbourhood is remarkably homogeneous from a built form standpoint, with no apartment buildings of any kind in the immediate area except the aforementioned apartment building at 61 Paffard Street.

[28] In response, the Applicant submitted that Mr. Dorfman's definition of compatibility is far too narrow, amounting to requiring contemplated development to be the same or nearly the same as what already exists.

[29] The Applicant also directed the Tribunal to the Town's planning report, authored by Ms. Alderman, in which it addresses questions of compatibility pertaining to compatibility considerations that were not addressed by the Town at the hearing. For example, the staff report noted that the area where the development is being proposed is a relatively new development area (10-15 years old), and so there is no concern about compatibility with heritage resources. In addition, staff noted that the location of the building, being set back and partially tucked behind the residences on either side of it, mitigates compatibility concerns respecting height, massing and built form because the building will be partially hidden and otherwise less imposing when viewed from King Street.

[30] On this last point, Mr. Dorfman opined that the fact that the proposed development is setback further from the street and partially behind adjoining residences works against it from a compatibility standpoint, because it would be unlike its neighbours. At the same time, he did not comment on how pushing it back would or would not naturally mitigate other compatibility concerns by making it less visible and imposing.

[31] As a counterpoint to Mr. Dorfman's opinions, and adding to and reiterating some of the comments by Ms. Alderman in her report, Mr. Butler opined that the proposed density of development is appropriate as there are no anticipated adverse impacts to cultural heritage resources, and the proposed building is compatible with the

surrounding low-rise built form because it is similar in terms of permitted heights (albeit one storey taller than most existing residences). He also recognized that the proposed building setbacks, fencing, and landscaping will serve to buffer the proposed apartment building from adjacent properties, thus further mitigating any impacts the proposed building might otherwise have on the streetscape.

[32] Upon contemplating all of the above evidence, the Tribunal prefers and accepts the shared opinions of Ms. Alderman and Mr. Butler, insofar as the proposed development is adequately compatible with the surrounding neighbourhood. The Tribunal finds their opinions to be more balanced than Mr. Dorfman's, insofar as they acknowledge the obvious compatibility challenges of the proposed development, while still opining that the proposed development remains sufficiently compatible to be consistent/conform with the applicable policy instruments.

[33] The Tribunal declines to accept Mr. Dorfman's opinion partially because it finds that his definition of compatible is too narrow and is akin to essentially requiring that the proposed development be the same or almost the same as the surrounding low-density, low-rise development "with peaked roofs". In this sense, the Tribunal finds that Mr. Dorfman's opinions are premised upon too restrictive of a viewpoint in terms of what constitutes compatible. The Tribunal also finds his evidence to be too selective, focusing too narrowly on some aspects of compatibility which clearly do not favour the development, while failing to address other compatibility aspects which support the plans. The Tribunal finds that this tendency to be selective weakens the overall weight of his evidence.

Configuration of the subject lot

[34] The Tribunal notes that the Town and its witness, Mr. Dorfman, focussed a great deal of attention on the fact that the configuration of the subject lot was the product of the Applicant's historical efforts to subdivide and adjust the lot lines of the subject parcel. Furthermore, they emphasised that, if not for such efforts, the lot would not exist in its current form to feasibly accommodate the proposal. The Town went as far as to suggest some sort of untoward practices on behalf of the Applicant (although they stopped short of suggesting anything illegal), insofar as they suggested that the pieced-

together lot was amalgamated by the Applicant covertly and deliberately without disclosing its eventual planned purpose.

[35] On this point, the Town and Mr. Dorfman cited a number of Official Plan policies which they claimed could have restricted the use of the subject lot from being used for its eventual intended purpose. The Tribunal finds that such evidence and submissions were tendered to the Tribunal in a way that is akin to retroactively arguing against the formation of the subject lot in the first place.

[36] In response, the Applicant simply submitted that the history of the formation of the subject lot is irrelevant because the merits of it are not at issue.

[37] The Tribunal accepts the Applicant's position and similarly finds that the history of the formation of the subject lot is irrelevant. The Tribunal finds that the Applicant clearly went through the proper processes, and the Town allowed the lot-creation/configuration without any conditions that might otherwise disallow the present proposal. Whether or not there should have been such conditions imposed at the time it was eventually formed is not a question for the Tribunal to decide now. The Tribunal is furthermore in no position to retroactively adjudicate the merits of forming the subject lot for the Applicant's (now) stated purpose.

Shadow Impacts

[38] Mr. Raimondo testified that he expects shadow impacts from the proposed building to be acceptable, and minimized to the greatest extent possible through strategic location of the building on the lot. Upon receiving no evidence to the contrary, the Tribunal accepts his evidence and finds no unacceptable shadow impacts from a policy standpoint.

ZBA Holding Provision

[39] The only difference between the OPA and ZBA drafts that have been proposed by the Applicant, in comparison to those which were recommended for approval as part of Ms. Alderman's Staff Report, is that Ms. Alderman recommends a Holding provision

be applied to the ZBA pertaining to stormwater management. In her testimony, Ms. Alderman continues to opine that such a Holding provision is prudent.

[40] While the Applicant contends that “a Holding provision is redundant, as it could be addressed at the site plan stage”, they also confirm that they are “not strongly opposed [to it]”.

[41] From the Town’s perspective, while it obviously opposes the applications altogether, it also confirms that it is preferable to have the Holding provision in place if the Tribunal approves the applications.

[42] Accepting Ms. Alderman’s opinion, and without strong opposition from the Applicant, the Tribunal elects to impose the Holding provision.

SUMMARY AND CONCLUSION

[43] The Tribunal finds that a balancing approach is required to determine whether the subject proposal satisfies the applicable legislative tests found at s. 3(5) and 24(1) of the Act. In this

[44] sense, the Tribunal considers the generally undisputed fact that the proposed development will support those provincial and municipal planning policies which promote providing an adequate supply, mix and range of housing options in the Town, together with a finding that the proposal is sufficiently compatible with the surrounding neighbourhood context. Upon such considerations, using a balancing approach, the Tribunal finds that the Applications are sufficiently consistent/conform with the applicable provincial and municipal policies, contemplate matters of provincial interest set out in s. 2 of the Act, and otherwise constitute good planning.

ORDER

[45] **THE TRIBUNAL ORDERS** that;

1. The appeal pursuant to s. 22(7) of the *Planning Act* is allowed, and the Official

Plan for the Town of Niagara-on-the-Lake is amended as set out in **Attachment 1** to this Order; and

2. The appeal pursuant to s. 34(11) of the *Planning Act* is allowed, in part, and directs the municipality to amend By-law 4316-09, as set out in **Attachment 2** to this Order. The Tribunal authorizes the municipal clerk of Town of Niagara-on-the-Lake to assign a number to this by-law for record keeping purposes.

[46] The Member is not seized but may be spoken to through the Case Coordinator if any issues arise.

“K.R. Andrews”

K.R. ANDREWS
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

Appendix IV

THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. ###-24

Official Plan Amendment No. 89

Part Lot 14 RCP 692 Niagara, Parts 1 & 2 Plan 30R-16061, Niagara-on-the-Lake (Northwest Side of King Street, South of Cottage Street)

A BY-LAW PURSUANT TO SECTION 17 OF THE ONTARIO PLANNING ACT TO AMEND THE TOWN OF NIAGARA-ON-THE-LAKE OFFICIAL PLAN

WHEREAS the Town of Niagara-on-the-Lake Council is empowered to enact this By-law by virtue of the provisions of Section 17 of the *Planning Act, R.S.O. 1990, c.P.13, as amended*;

The Council of The Corporation of the Town of Niagara-on-the-Lake, in accordance with the provisions of Section 17 of the *Planning Act* hereby enacts as follows:

1. Amendment No. 89 to the Official Plan for the Town of Niagara-on-the-Lake consisting of the attached explanatory text and schedule is hereby adopted.
2. Amendment No. 89 to the Official Plan for the Town of Niagara-on-the-Lake is exempt from the approval of the Regional Municipality of Niagara and will come into force and take effect on the day of the final passing thereof.

Enacted and passed this ___th day of _____, 2024.

LORD MAYOR GARY ZALEPA

TOWN CLERK GRANT BIVOL

**Amendment No. 89 to the Official Plan
for the Town of Niagara-on-the-Lake**

PART A – THE PREAMBLE

Part A does not constitute part of this amendment. Part A describes the purpose and basis for this amendment.

PART B – THE AMENDMENT

Part B constitutes Amendment No. 89 to the Official Plan for the Town of Niagara-on-the-Lake.

PART C – ADDITIONAL
INFORMATION

Part C does not constitute part of this amendment but outlines additional information available upon request.

PART A - THE PREAMBLE

The preamble does not constitute part of this amendment.

PURPOSE

The purpose of this amendment is to redesignate lands from “Low Density Residential” to residential exception designation “EX-RES-12” with site-specific exceptions to permit a medium density residential development (3-storey apartment building) with a density of 53 units per hectare, parking located to the side and front of the building, and that the main building entrance does not front onto the street and that the lot is located on a local street.

BASIS

The basis of the amendment is as follows:

1. The subject lands are located in the Urban Area of Old Town, on the northwest side of King Street and south of Cottage Street.
2. The Official Plan directs that medium density residential developments will generally not exceed 12 units per acre (30 units per hectare) unless accompanied by a detailed site and area analysis demonstrating that there will be minimal impact on surrounding neighbourhoods. The proposal would result in a net density of 21.3 units per acre (53 units per hectare). Analysis provided with the requested amendment demonstrates that the proposed development is not anticipated to have a significant adverse impact on the surrounding area.
3. The proposed residential apartment building is compatible with existing and planned development in Old Town while maintaining the general character of Old Town and represents an appropriate and compatible form of intensification by making efficient use of land and existing services.
4. The proposal would provide more housing and a more diverse housing stock to address current housing needs.
5. The amendment is consistent with the Provincial Policy Statement (2020) and conforms to the Growth Plan (2020 Consolidation), the Niagara Official Plan (2022) and the general intent of the Town's Official Plan (2017 Consolidation, as amended).
6. Future application for Site Plan Approval would be required to create the proposed residential apartment building.

PART B - THE AMENDMENT

Part B – The Amendment, consisting of the following text and Schedule, constitutes Amendment No. 89 to the Official Plan for the Town of Niagara-on-the-Lake.

DETAILS OF THE AMENDMENT

1. Schedule B to the Official Plan be amended by redesignating lands from “Marine Commercial” to “EX-RES-12” as shown on ‘Schedule 1’ attached hereto.
2. That the following is added to Part 3 - Land Use Policies, Section 9: Residential under Section “9.5 EXCEPTIONS”:

“EX-RES-12 The lands identified as “EX-RES-12” on Schedule B and located on the northwest side of King Street, south of Cottage Street, shall be subject to all requirements of the “Medium Density Residential” designation and any other general requirements of this Plan, except the following shall apply:

In addition to the uses identified under Section 9.3.2 (1) of the Official Plan an apartment building being 3-storeys in height and consisting of 17 units with a density of 53 units per hectare (21.3 units per acre) shall be permitted.

Notwithstanding Policy 9.3.2.3 g) of the Official Plan, the lands are on a local street.

Notwithstanding Section 6A.4.4 f) (Built-Up Area Intensification Policies) and 6A.4.4 b) (Urban Design) of the Official Plan, parking for the apartment building is permitted to the side and front of the building, and the main entrance to the building is not required to front onto the street.”

PART C – ADDITIONAL INFORMATION

The following additional information is available upon request:

1. Community and Development Services Report CDS-24-010
2. Special Council Meeting Minutes dated January 24, 2024
3. Council Meeting Minutes dated January 30, 2024



**SCHEDULE 1 ATTACHED TO OFFICIAL PLAN AMENDMENT #89
BEING AN AMENDMENT TO SCHEDULE "B" OF THE OFFICIAL
PLAN OF THE TOWN OF NIAGARA-ON-THE-LAKE**

LORD MAYOR
GARY ZALEPA

TOWN CLERK
GRANT BIVOL

ATTACHMENT 2

Appendix V

Explanation of the Purpose and Effect of By-law 4316EF-24

The subject lands are located on the northwest side of King Street, south of Cottage Street, legally described as Part Lot 14 RCP 692 Niagara, Parts 1 & 2 Plan 30R-16061, Niagara-on-the-Lake.

Purpose

The purpose of this By-law is to rezone the subject lands to permit a proposed three-storey seventeen (17) unit residential apartment building. A “Holding (H)” symbol is included to address stormwater management requirements, and ensure that the stormwater management approach for the development is addressed to the satisfaction of the Town and prior to Site Plan Approval.

Effect

The effect of this By-law is to rezone the subject lands from “Old Town Community Zoning District – Residential (R1) Zone” to “Old Town Community Zoning District - Residential Multiple (RM1-112) - Site Specific Zone” with site-specific provisions for lot frontage, rear yard setback, children’s play area, and fencing between a residential and agricultural interface, and to add a “Holding (H)” symbol to the “Residential Multiple (RM1-112) Zone” to ensure that a suitable stormwater management approach is provided, to the satisfaction of the Town.

<i>Applicant:</i>	Butler's Gardens Development Inc.
<i>File Number:</i>	ZBA-14-2023
<i>Report Number:</i>	CDS-24-010
<i>Assessment Roll Number:</i>	#####

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 4316EF-24**

Northwest side of King Street, South of Cottage Street Roll #####

A BY-LAW PURSUANT TO SECTION 34 OF THE ONTARIO *PLANNING ACT* TO AMEND BY-LAW 4316-09, AS AMENDED, ENTITLED A BY-LAW TO REGULATE THE USE OF LANDS AND THE ERECTION, USE, BULK, HEIGHT, LOCATION, AND SPACING OF BUILDINGS AND STRUCTURES WITHIN THE TOWN OF NIAGARA-ON-THE-LAKE.

WHEREAS the Town of Niagara-on-the-Lake Council is empowered to enact this By-law by virtue of the provisions of Section 34 of the Planning Act, R.S.O. 1990, c.P.13, as amended.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE enacts as follows:

1. Schedule "A-2" of By-law 4316-09, as amended, is further amended by changing the zoning of the subject lands identified on Map "A" (attached to and forming part of this By-law) from "Old Town Community Zoning District – Residential (R1) Zone" to "Old Town Community Zoning District - Residential Multiple Holding (RM1-H-112) - Site Specific Zone."
2. That Subsection 7.14 Site Specific Exceptions of By-law 4316-09, as amended, is hereby further amended by adding the following section:

**7.14.112 Northwest Side of King Street, South of Cottage Street –
See Schedule 'A-2' (RM1-H-112)**

7.14.112.1 RM1-H-112 Zone Requirements

In lieu of the corresponding provisions of Subsection 7.5.2.3, and in addition to such provisions, the following provisions shall apply to an apartment building on the subject lands identified as RM1-H-112 on Schedule 'A-2':

a)	Minimum lot frontage	19.0 metres
h)	Minimum rear yard setback	9.5 metres

7.14.112.2 RM1-H-112 Children's Play Area

Notwithstanding the provisions of Subsection 6.3(b) of Zoning By-law 4316-09, as amended, an equipped children's play area shall not be required on the subject lands identified as RM1-H-112 on Schedule 'A-2'.

7.14.112.3 RM1-H-112 Surface Parking Area Setbacks

Notwithstanding the provisions of Subsection 6.46 of Zoning By-law 4316-09, as amended, an ornamental iron fence may be constructed and maintained along the residential property line which abuts an agricultural zone on the subject lands identified as RM1-H-112 on Schedule 'A-2'.

7.14.113.4 RM1-H-112 Holding (H) Provision

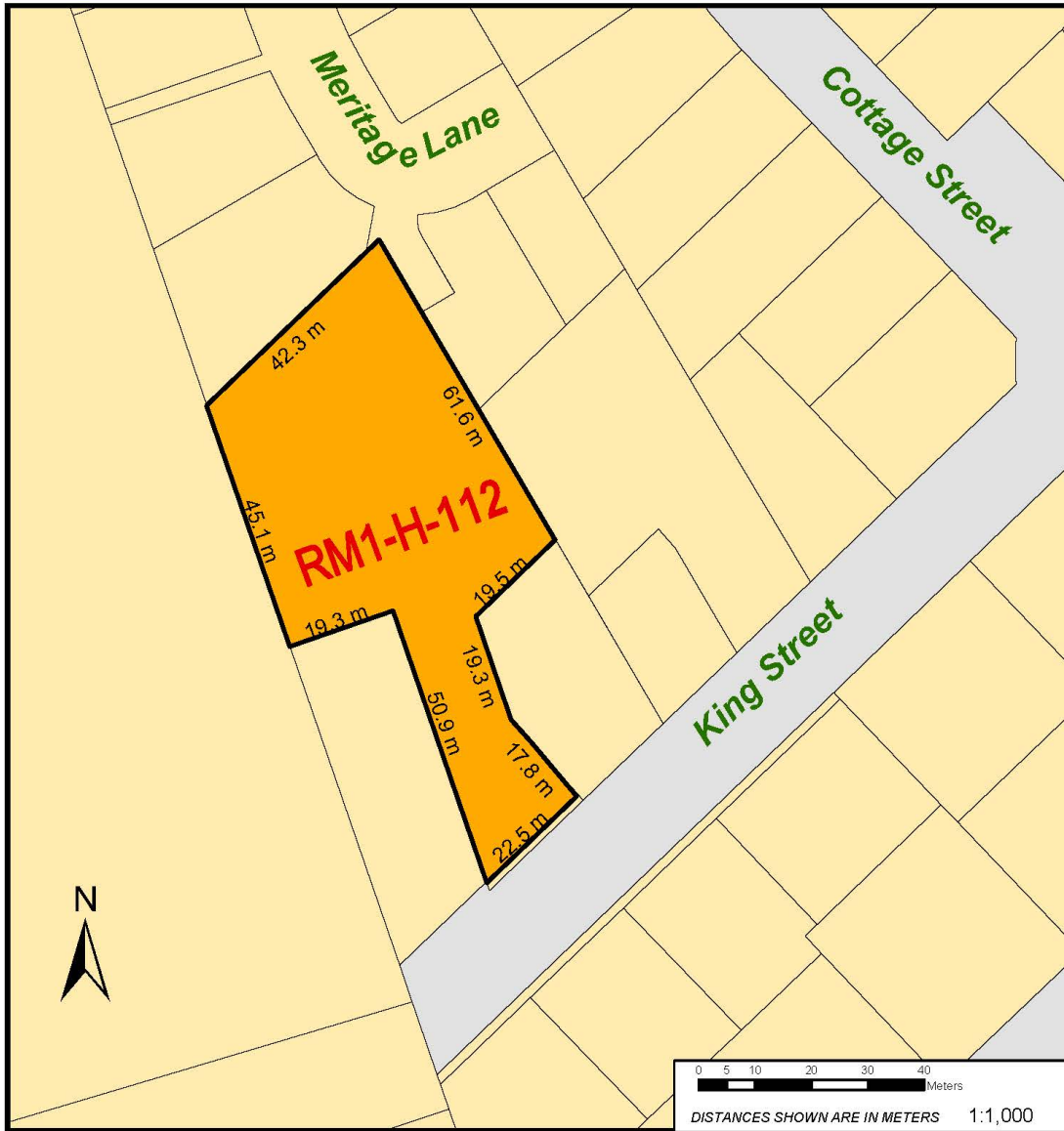
The development of the subject lands identified as RM1-H-112 on Schedule 'A-2' shall only be permitted upon removal of the Holding (H) symbol. The Holding (H) symbol shall not be removed until such time the stormwater management approach for the development is addressed to the satisfaction of the Corporation of the Town of Niagara-on-the-Lake and prior to Site Plan Approval.

- 3. That this By-law shall become effective upon final approval of the related Amendment No. 89 to the Niagara-on-the-Lake Official Plan.

READ A FIRST, SECOND AND THIRD TIME THIS ___th DAY OF _____, 2024.

LORD MAYOR GARY ZALEPA

TOWN CLERK GRANT BIVOL



MAP 'A' ATTACHED TO BY-LAW 4316FF-24, BEING AN AMENDMENT TO SCHEDULE "A-2" OF ZONING BY-LAW 4316-09, AS AMENDED, OF THE TOWN OF NIAGARA-ON-THE-LAKE AS PASSED ON THIS 16th DAY OF JANUARY, 2024.

LORD MAYOR
GARY ZALEPA

TOWN CLERK
GRANT BIVOL