



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

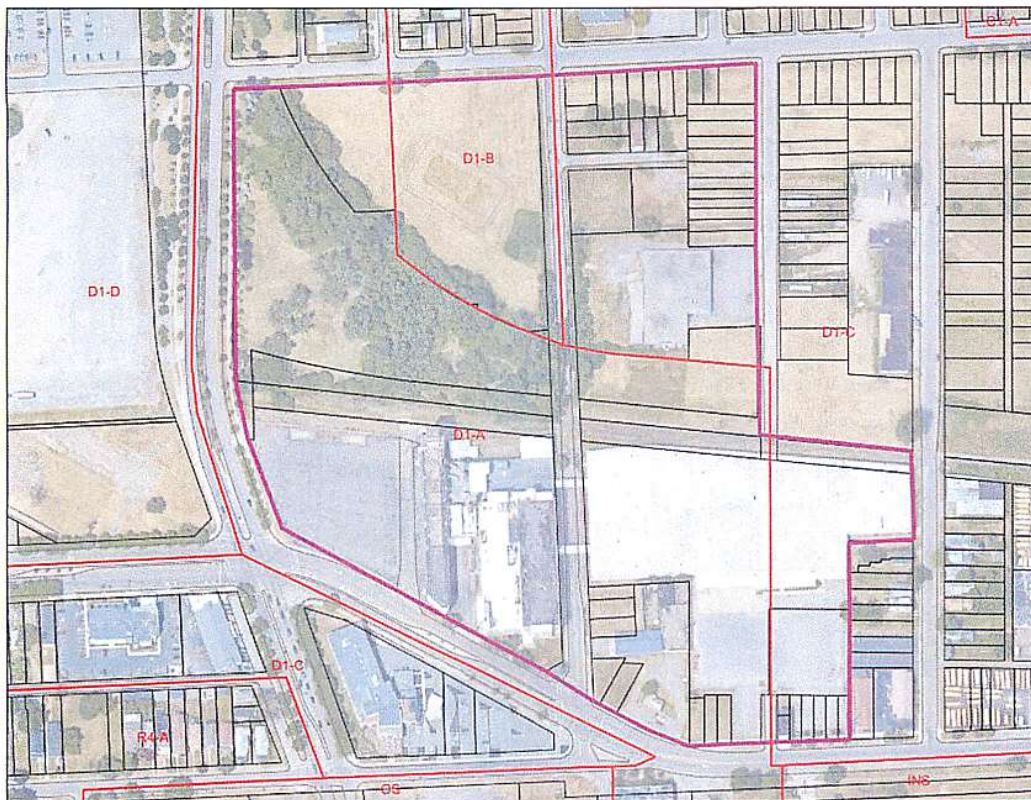
October 4, 2021

Roger Trevino
Niagara Falls Redevelopment
1625 Buffalo Ave, Ste 2B
Niagara Falls, NY 14303

RE: URBACON Data Center at John B. Daly Blvd.

Dear Roger,

Regarding the prospective development of a Data Center within the City of Niagara Fall at the corner of Falls Street and John B. Daly and south to Rainbow Blvd, we have compiled this letter containing the potential process for review of this development. The image below shows a rough outline of the area we discussed at our meeting last week. Note that timelines below are estimated and could be shorter or longer based on the specific circumstances; SEQR may present significant alterations to timeline. This is not an official determination, may not be exhaustive, and may change based on new information.



1) THE ABILITY TO APPLY.

The first item that we need before any application can proceed is consent from the landowner. For all of these parcels shown, we will need consent from an authorized representative of the landowner to proceed.

2) IS IT AN ALLOWABLE USE?

After we receive an application, we must initially determine that you can operate such use within the zoning district. As you can see within the image above, the area of the proposed development lies within the D1-A, D1-B and D1-C zoning districts. While we cannot make an official zoning determination without an application for development, we believe that a Data Center would be classified as a “Warehouse” use. If that is our official determination of the proposed use, warehouses are not a permitted use within the applicable zoning district. To undertake this use in the area, the following processes are a potential avenue:

I. Zoning Interpretation

- a) Simply, if the applicant believes the zoning ordinance has been misinterpreted and it should be classified as a different, permitted use, they can request the Zoning Board of Appeals overturn the determination of the Zoning Officer.
- b) Estimated Timeline: Between 30 and 60 days.

II. Use Variance (1302.1.1)

- a) Applicant needs to prove unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - i) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - ii) alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - iii) the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - iv) the alleged hardship has not been self-created.
- b) Board of Appeal shall conduct a public hearing within sixty-two days from the day a complete application is received. The Zoning Board of Appeals shall decide upon appeals and applications within sixty-two days after the public hearing.
- c) Use Variances are generally a Type 1 SEQRA action.
- d) Estimated Timeline: Between 30 and 90 days excluding SEQR considerations.

III. Re-Zoning – Amendment Procedure (1302.3.1)

- a) The City Council may, after receiving recommendation of the Planning Board and after due public notice and hearing, **amend any part of the zoning text, schedules or zoning map**. An application to amend this Zoning Ordinance may be initiated by:
 - i) A verified petition of owners of fifty per centum or more of the frontage in any district or part thereof, which shall be accompanied by the requisite fee, no part of which shall be returnable;
 - ii) An application by an individual property owner which shall be accompanied by the requisite fee, no part of which shall be returnable.
- b) Petitions and applications shall be filed with the Planning Board and shall include a preliminary proposal, along with a rezoning application and requisite fee. Zoning amendment petitions shall include, but not be limited to, the following background information:
 - i) Proposed land uses, including number of dwelling units, gross floor area and land area for each such land use.
 - ii) Proposed road system and all existing and proposed rights-of-way and easements, whether public or private.
 - iii) The interior common open space system and a statement as to how it is to be owned and maintained.
 - iv) The interior drainage system and how it is proposed to be connected to the drainage systems of adjoining areas.
 - v) If the development is to be staged, clear indication of how the staging is to proceed.
 - vi) Evidence of how the proposal would meet the planning objectives of the Comprehensive Plan and/or the proposed District.
 - vii) Evidence to demonstrate applicant's competence to carry out the plan and his awareness of the financial and organizational scope of such a project.
 - viii) Such further and other documentation as the Planning Board may deem necessary or appropriate.
 - ix) Part 1 of a completed Full Environmental Assessment Form or, if appropriate, a draft Environmental Impact Statement.
- c) The Planning Board shall determine the completeness of petitions and applications and issue a recommendation following a public hearing as specified herein prior to submission of said petition to the City Council. A public hearing on a rezoning petition shall be held within 40 days of the Planning Board's receipt of a completed zoning amendment petition. Subsequent to the public hearing by the Planning Board, the Planning Board shall, at a public meeting, adopt a resolution setting forth its recommendations to the City Council with respect to the proposed amendment.
- d) The City Council shall either approve a proposed amendment by ordinance duly enacted, or adopt the proposed amendment, with or without conditions, or deny the proposed amendment. A final decision by the City Council on a petition shall be made within 40 days of the filing of the Planning Board's recommendation
- e) Rezoning is likely a Type 1 SEQRA action.
- f) Estimated Timeline: Between 120 and 150 Days

3) APPROVALS TO CONSTRUCT:

Once you have any necessary zoning approvals to undertake the proposed Use, the next approvals will relate to site development:

- I. *Level 2 Site Plan Review (1324.4.2)*
 - a) Site Plan review is required as this project exceeds the gross floor area threshold specified within the Zoning Ordinance. Process and requirements are generally spelled out within Zoning Ordinance.
 - b) Type 1 SEQRA action.
 - c) Estimated Timeline: Between 90 and 120 days
- II. *Area Variances, if required, from the Zoning Board.*
 - a) Pending based on design and potential approval of the use. Process for area variances is spelled out within Zoning Ordinance.
 - b) Estimated Timeline: Between 30 and 60 days
- III. *All required building permits and engineering approvals*
 - a) Estimated Timeline: Unknown

4) ADDITIONAL APPROVALS NEEDED:

- I. *NY State Environmental Quality Review (SEQR)*
 - a) This will need to be done in conjunction with all other necessary approvals and must include consideration of the entire action. As such, before any approval is granted on rezoning, use variance, site plan, etc., all provisions of SEQR must have been complied with.
 - b) There must be a coordinated review between all involved agencies which may be at least the City Council, Planning Board and Zoning Board. Other involved agencies may be those noted below or yet to be discovered.
 - c) Timelines and process are generally spelled out within the State regulations but may not be easily predictable. If an EIS is required, the process will be significantly longer.
- II. *Niagara Falls Water Board*
- III. *Niagara County Planning Board*
 - a) Required if project requires any change in zoning ordinances or zoning map changes having a city-wide affect or other triggering factors.
- IV. *Department of Environmental Conservation (DEC)?*
- V. *NYS State Historic Preservation Office (SHPO)*
 - a) Four properties within the site are noted as eligible for National Register Listing. This does not offer any demolition protections. Rather, they may be opportunities for the use of historic tax credits through National Register listing. You can find more information at: <https://parks.ny.gov/shpo/tax-credit-programs/>
 - i) The following properties have been determined edible for National Register listing:
 - (1) 816 Rainbow Blvd Shredded Wheat/Nabisco Grain Elevator
 - (2) 211 Tenth St, James Mullane Garage
 - (3) 1008 Buffalo Ave

- (4) 247 Tenth St, Niagara Falls Metal Stamping Work's/Kuhns Storage
- VI. *Department of Transportation*
- a) If access off of State Highway is requested.

As you are aware, there are also development agreements relating to this land including one dated 6/25/2003. I am not aware of any determination of conformance for this proposed development being consistent with the 2003 agreement, and this letter should not be construed as providing that determination.

I hope that this is helpful to you for your planning purposes. While we will try to provide guidance where we are able, timelines and process expressed here are subject to change based on circumstances if/when the project proceeds.

Our Zoning Ordinance, Comprehensive Plan, and other relevant documents are available at the City's website: <https://niagarafallsusa.org/government/city-departments/planning-and-environmental/>

If we can provide any further information or clarification, I hope you will not hesitate to let us know.

Best,



Eric Cooper, Director of Planning

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Cc: Mayor Robert Restaino
Grace Celik, Planner II / HPS
Project File