

## **Committee of Adjustment MINUTES**

### **Committee Of Adjustment Hearing 6/2014**

Meeting Type : Committee of Adjustment Hearing

Date : Wednesday, August 06, 2014

Location : Town of Pelham Municipal Building - Council Chambers

### **MINUTES**

#### **ATTENDANCE**

##### **Present were:**

##### **Hearing Chair**

- B. DiMartile

##### **Hearing Panel**

- R. Hatt
- G. Woods

##### **Planner I**

- Julie Hannah

##### **Deputy Clerk / Assistant Secretary-Treasurer**

- Jordan Mammoliti

##### **Other**

- Applicants and/or Authorized Agents as Indicated in Minutes
- Interested Citizens

#### **CALL TO ORDER, DECLARATION OF QUORUM AND INTRODUCTION OF COMMITTEE AND STAFF**

The meeting was called to order by Chair DiMartile at 4:00 p.m., who introduced the Committee Hearing Panel Members and Staff in attendance at the hearing.

#### **DISCLOSURE OF PECUNIARY INTEREST AND GENERAL NATURE THEREOF**

The members in attendance declared they had no pecuniary interest in any of the applications to be dealt with at this hearing.

**FILE A12/2014P -  
MICHAEL &  
SHARON  
MASOTTI**

(APPLICATIONS FOR  
MINOR VARIANCE)

**Purpose of the Application:**

The subject land is zoned Agricultural A in accordance with Pelham Zoning By-law 1136(1987), as amended. The applicants are requesting relief of Section 7.7(d) to allow a maximum accessory building height of 5.24 metres whereas 3.7 metres is allowed. Relief is requested to facilitate the construction of an accessory building to accommodate storage of equipment and vehicles.

**Representation:**

Michael & Sharon Masotti represented on behalf of the application.

**Correspondence:**

Town of Pelham Community Planning & Development Report

- Appendices:
  - Town of Pelham Public Works
  - Town of Pelham Chief Building Official
  - Niagara Region Development Services
  - Niagara Peninsula Conservation Authority
  - D'Arcy Tuesham
  - Doug Robertson
  - Sharon & Lawrence Overbeeke
  - Philton Moore

**?Comment:**

Mr. and Mrs. Masotti had no additional comments to offer.

**Resolution #CA20140806.1001**

Moved By: Member Hatt    Second By: Member Woods

**Application for relief of Section 7.7(d) to allow a maximum accessory building height of 5.24 metres whereas 3.7 metres is allowed is hereby GRANTED.**

**The above decision is based on the following reasons:**

1. **The variance is minor in nature as the maximum height of the accessory building will be marginally adjusted from the zone requirement to accommodate the door height to store the farm equipment and personal trucks. The variance is also considered minor in nature as there will not be a negative impact on the adjacent neighbour to the east as the side yard setback for structures accessory to dwellings will be maintained.**
2. **The general purpose and intent of the Zoning By-Law is maintained as the increase in the maximum height of the accessory building is minor in nature and the scale of the building is appropriate given its location in the agricultural area.**
3. **The intent of the Official Plan is maintained as the use is permitted in the Agricultural designation.**
4. **The proposal is desirable for the appropriate development and/or use of the land as the increase in the maximum height of the accessory building will allow for the proper storage of farm equipment and personal trucks and the siting of the accessory building will not affect the 'Environmental Protection Three'**

**designated lands. Further, the variance will maintain the rural, agricultural character of the area.**

- 5. This application is granted without prejudice to any other application in the Town of Pelham.**
- 6. No objections were received from commenting agencies or abutting property owners.**

**CARRIED**

**FILE A13/2014P -  
MOUNTAINVIEW  
HOMES  
(NIAGARA) LTD.  
(APPLICATIONS FOR  
MINOR VARIANCE)**

**Purpose of the Application:**

The subject land is zoned Residential Multiple 1 RM1-180 in accordance with Pelham Zoning By-law 1136(1987), as amended by OMB Order no. 1535 (September 22, 2004). The required rear-yard setback distance in an RM1 Zone for Street Townhouse Dwellings is 7.5 metres; however Section 6.35(c) of the General Provisions permits a 1.5 metre encroachment into the rear-yard for unenclosed porches, balconies, steps and patios. The applicant is requesting relief from this provision to allow a total encroachment of 2.65 metres for the proposed deck resulting in a rear-yard setback distance of 4.85 metres. The applicants are requesting relief for the purposes of constructing an enclosed deck.

**Representation:**

Jon Whyte, Agent represented on behalf of the application.

**Correspondence:**

Town of Pelham Community Planning & Development Report

- Appendices:
  - Town of Pelham Public Works
  - Town of Pelham Chief Building Official
  - Lawrence & Eleanor Dolan
  - Rachel Addario
  - Barbara Ann Rybiak
  - Sandra Warden

**?Comment:**

Mr. Whyte commented that Townhouses are a dense form of housing. He sympathizes with the neighbours whose correspondence was noted in the Planning report as it is not uncommon for privacy concerns to exist. The subject property is part of a larger subdivision where many owners have requested a similar variance to install and overhang and many others install gazebos or canvas overhangs to achieve a similar effect. Mr. Whyte further clarified that the the patio will be at grade and he does not believe this will cause any privacy issues with rear neighbours. He addressed comments submitted by neighbours by stating that he does agree that the development would cause a decrease to property values in the area, and that there should be no grading and drainage concerns, as this was noted in teh comments submitted by the Director of Public Works.

Lawrence Dolan of Kline Crescent commented that the Townhouse development consumes a fairly large footprint (over 1500 square feet) and he does not believe that a covered porch is a reasonable development for the subject property.

Barbara Rybiak of Kline Crescent noted that she has commented on previous applications for minor variance when they were of a similar nature. Ms. Rybiak noted that there is an easement on the subject property and questioned whether the proposed development would encroach upon it. Mr. Whyte advised that there would be approximately 1.85 metres between the patio and the easement, therefore there would be no encroachment.

Member Woods questioned whether a deck is existing on the property. Mr. Whyte advised that there is no existing deck, and the proposal includes steps leading to patio stones at grade level.

Chair Dimartile reminded members of the public that each application is considered on its own merits. Although similar development may be discussed as a comparison, any minor variance previously granted by the Committee has no influence on the application currently being considered by the Committee.

Member Hatt questioned whether the proposed rear-yard setback is significantly less than others in the area who have received a minor variance for similar development. Mr. Whyte advised that the proposal is very similar to other applications that have been considered by the committee.

Chair DiMartile mentioned that some members of the public may be concerned about the applicant potentially installing screening or glass sliding doors on the covered porch. He questioned whether the applicants are aware that this is not allowed under this variance application. Mr. Whyte advised that enclosing the porch is not part of the work that Mountainview has been contracted to complete, however he will advise the property owners that the current variance application does not include enclosing of the porch, and that further approvals would be required from the Town of Pelham should they wish to do this work.

#### **Resolution #CA20140806.1002**

Moved By: Member Woods    Second By: Member Hatt

**Application for relief of Section 6.35(c) to allow a total encroachment of 2.65 metres for the proposed deck resulting in a rear-yard setback distance of 4.85 metres is hereby GRANTED.**

This decision is based on the following reasons:

1. The variance is minor in nature as the increased encroachment of the proposed covered deck will not result in a negative impact on the adjacent uses or substantially remove any of the amenity space on the subject parcel. The variance is also considered minor in nature as the proposed deck will be at the rear of the dwelling and will be constructed at grade level with a covered roofline which is considered appropriate as it will not overshadow or impede on adjacent properties private amenity space.
2. The general purpose and intent of the Zoning By-Law is maintained as the encroachment and rear-yard setback adjustments are minor in nature considering the proposed deck will be approximately 1.15 metres into the rear yard yet will maintain sufficient open space.
3. The intent of the Official Plan is maintained as the use is permitted in the Townhouse Residential and Greenfield Overlay

**designation.**

4. **The proposal is desirable for the appropriate development and/or use of the land as the scale of the proposed deck will maintain the amenity area and it will not affect the original intent of the building design.**
5. **This application is granted without prejudice to any other application in the Town of Pelham.**

**CARRIED**

**FILE A14/2014P -  
MOUNTAINVIEW  
HOMES  
(NIAGARA) LTD.  
(APPLICATIONS FOR  
MINOR VARIANCE)**

**Purpose of the Application:**

The subject land is zoned Residential Multiple 1 RM1-180 in accordance with Pelham Zoning By-law 1136(1987), as amended by OMB Order No. 1535 (September 22, 2004). The required rear-yard setback distance in an RM1 Zone for Street Townhouse Dwellings is 7.5 metres; however Section 6.35(c) of the General Provisions permits a 1.5 metre encroachment into the rear-yard for unenclosed porches, balconies, steps and patios. The applicant is requesting relief from this provision to allow a total encroachment of 2.98 metres for the proposed deck resulting in a rear-yard setback distance of 4.52 metres. The applicants are requesting relief for the purposes of constructing an enclosed deck.

**Representation:**

Jon Whyte, Agent represented on behalf of the application.

**Correspondence:**

Town of Pelham Community Planning & Development Report

- Appendices:
  - Town of Pelham Public Works
  - Town of Pelham Chief Building Official
  - Sandra Warden

**?Comment:**

Mr. Whyte had no comments to offer on the application.

**Resolution #CA20140806.1003**

Moved By: Member Hatt    Second By: Member Woods

**Application for relief of Section 6.35(c) to allow a total encroachment of 2.98 metres for the proposed deck resulting in a rear-yard setback distance of 4.52 metres is hereby GRANTED:**

This decision is based on the following reasons:

1. **The variance is minor in nature as the increased encroachment of the proposed covered deck will not result in a negative impact on the adjacent uses or substantially remove any of the amenity space on the subject parcel. The variance is also considered minor in nature as the proposed deck will be located at the north-west corner of the dwelling and will be constructed at grade level with a covered roofline which is considered appropriate as it will not overshadow or impede on adjacent properties private amenity space.**
2. **The general purpose and intent of the Zoning By-Law is maintained as the encroachment and rear-yard setback adjustments are minor in nature considering the proposed deck will be approximately 1.48 metres into the rear**

yard yet will maintain sufficient open space.

3. **The intent of the Official Plan is maintained as the use is permitted in the Townhouse Residential and Greenfield Overlay designation.**
4. **The proposal is desirable for the appropriate development and/or use of the land as the scale of the proposed deck will maintain the amenity area and it will not affect the original intent of the building design.**
5. **This application is granted without prejudice to any other application in the Town of Pelham.**

**CARRIED**

**FILE B8/2014P -  
ROBERT &  
LINDA YAGER**  
(APPLICATIONS FOR  
CONSENT)

**Purpose of the Application:**

Application is made for consent to convey 1118 square metres of land to be added to Part 3 on the drawing submitted, municipally known as 765 Welland Road. 2,127 square metres of land with a dwelling known municipally as 768 Canboro Road (Part 1) is to be retained for residential use.

**Representation:**

Ross Gilbert, Agent represented on behalf of the application.

**Correspondence:**

Town of Pelham Community Planning & Development Report

- Appendices:
  - Town of Pelham Public Works
  - Town of Pelham Chief Building Official
  - Town of Pelham Corporate Services
  - L. Parr

**?Comment:**

Mr. Gilbert had no further comments to offer on the application.

Member DiMartile questioned what factors led to the provisional consent lapsing and the new application before the Committee of Adjustment. Mr. Gilbert advised of health issues that delaying the fulfillment of conditions and work that has been done to date to ensure conditions can be fulfilled.

Member Woods mentioned that concerns about drainage existed at the previous hearing. Mr. Gilbert advised that water does not pool on the subject as a swale is located to the rear of the property. Mr. Gilbert also advised that only a portion of the subject property will be used for parking and it will have a layer of gravel, similar to the existing parking lot at 765 Welland Road.

**Resolution #CA20140806.1004**

Moved By: Member Woods    Second By: Member Hatt

**Application for consent to convey 1118 square metres of land, shown as Part 2 on the drawing submitted, to be added to Part 3 on the drawing submitted, municipally known as 765 Welland Road is hereby**

**GRANTED.**

The above decision is subject to the following conditions:

1. That the proponent submit and obtain Council approval for all necessary amendments to the Town of Pelham Zoning By-law No. 1136(1987), as amended, including but not limited to rezoning the subject lands from Residential Village 1 RVI to an Institutional I Zone to the satisfaction of the Town of Pelham Director of Community Planning and Development.
2. That the proponent submit and obtain Council approval of a Site Plan application including, but not limited to a lot grading plan and storm water management plan to the satisfaction of the Director of Community Planning and Development.
3. Pursuant to Section 50(12) of the Planning Act, R.S.O. 1990, as amended, it is hereby stipulated that Section 50(3) or 50(5) shall apply to any subject conveyance of, or other transaction involving, the identical subject parcel of land. Therefore, once the subject parcel of land has been conveyed to the owner of the parcel abutting to the southwest, the subject parcel and the said abutting parcel shall merge in title and become one contiguous parcel of land. A solicitor's written undertaking shall be provided to the Secretary-Treasurer indicating that the necessary steps to implement the conveyance will be taken, together with the registrable legal descriptions of the subject parcel and the consolidated parcel.
4. That the Secretary-Treasurer be provided with a registrable legal description of the subject parcel, together with a copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.
5. That the final certification fee of \$350, payable to the Treasurer, Town of Pelham, be submitted to the Secretary-Treasurer.

This decision is based on the following reasons:

1. With conditions fulfilled, the application will conform to the policies of the Town of Pelham Official Plan, Regional Policy Plan and Provincial Policy Statement, and complies with the Town's Zoning By-law.
2. No objections to this proposal were received from commenting agencies or neighbouring property owners.
3. This Decision is rendered having regard to the provisions of Sections 51(24) and 51(25) of the Planning Act, R.S.O., as amended.

**CARRIED**

**FILE B10/2014P -  
HERT INC.**  
(APPLICATIONS FOR  
CONSENT)

**Purpose of the Application:**

Application is made for consent to convey 10,162 square metres of land to remain as vacant land. 10.42 hectares of land (Part 2) is to be retained for residential use, i.e. development by Plan of Subdivision, as approved by File 26T19-01013.

**Representation:**

Jennifer Vida, Agent represented on behalf of the application.

**Correspondence:**

Town of Pelham Community Planning & Development Report

- Appendices:
  - Town of Pelham Public Works
  - Town of Pelham Chief Building Official
  - Town of Pelham Corporate Services
  - Niagara Region Development Services
  - Niagara Peninsula Conservation Authority

**?Comment:**

Ms. Vida commented that the applicant understands and accepts all of the recommended conditions. She advised that no development is proposed as the application for consent is an interim measure until further applications are submitted once development is proposed for the subject property.

George Elcich of Merritt Road questioned whether the intent of the applicant is to build one dwelling on the subject property. Ms. Vida advised that the applicants will come forward to the Town of Pelham with a Planning Act application once plans are determined. Mr. Elcich will be circulated and given the opportunity to provide comments at a Public Meeting under the Planning Act at that time.

**Resolution #CA20140806.1005**

Moved By: Member Hatt Second By: Member Woods

**Application for consent to convey 10,162 square metres of land, shown as Part 1 on the drawing submitted, being part of Lot 175, Geographic Township of Thorold, in the Town of Pelham is hereby GRANTED.**

**This decision is subject to the following conditions:**

1. That an Inhibiting Order be registered on title prohibiting development until such time as a Zoning By-law Amendment and Draft Plan of Subdivision, in accordance with the East Fonthill Secondary Plan, is submitted and receives Council approval, to the satisfaction of the Town of Pelham Director of Community Planning and Development.
2. That the proponent convey a 0.3 metre reserve along the entire frontage of the subject property along Merritt Road to the Town of Pelham, to the satisfaction of the Town of Pelham Director of Community Planning and Development. All costs associated with this conveyance are the responsibility of the applicant.
3. That the Secretary-Treasurer be provided with a registrable legal description of the subject parcel, together with a copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.
4. That the final certification fee of \$350, payable to the Treasurer, Town of Pelham, be submitted to the Secretary-Treasurer.



**This decision is based on the following reasons:**

1. **With conditions fulfilled, the application conforms to the policies of the Town of Pelham Official Plan, Regional Policy Plan and Provincial Policy Statement, and complies with the Town's Zoning By-law.**
2. **No objections to this proposal were received from commenting agencies or neighbouring property owners.**
3. **This Decision is rendered having regard to the provisions of Sections 51(24) and 51(25) of the Planning Act, R.S.O., as amended.**

**CARRIED**

**MINUTES FOR APPROVAL**

**Resolution #CA20140806.1006**

Moved By: Member Woods    Second By: Member Hatt

**MOVED THAT the minutes of the Committee of Adjustment Hearing 5/2014 held on 2014/07/08 be adopted as printed, circulated and read.**

**CARRIED**

**ADJOURNMENT**

There being no further business, the Chair declared the hearing adjourned.

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B. DiMartile, Chair

Jordan Mammoliti, Assistant Secretary-Treasurer

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Date Approved

Hearing Chair