



COMMITTEE OF ADJUSTMENT
 Minutes of Hearing Held On: Tuesday, March 4th, 2014
 Council Chambers, 4:00 p.m.
 H2/2014

Attendance:

Hearing Chair: B. DiMartile
Hearing Panel: W. Lockey, Member
 G. Woods, Member

Staff: Jordan Mammoliti, Town Deputy Clerk/Assistant Secretary-Treasurer

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

Call to Order and Introduction of Committee Members 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.

Summary of Applications:

Requests for Withdrawal or Adjournment: Ralph & Mary Lostracco, File B3/2014P

Moved by Member Lockey; Seconded by Member Woods:

THAT File B3/2014P be adjourned from this hearing to allow the applicant an opportunity to provide addition information regarding Minimum Distance Separation requirements for the remnant parcel, with a rescheduling fee of \$200.

CARRIED

| <u>Applicant</u> | <u>File #</u> | <u>Decision</u> | <u>Page</u> | <u>Correspondence</u> |
|--|---------------|-----------------|-------------|-----------------------|
| <u>Minor Variance Applications:</u> | | | | |
| Mountainview Homes Niagara Ltd. | A1/2014P | GRANTED | 1 | 10 |
| Randy Mauro | A2/2014P | GRANTED | 2 | 13 |
| Trustees of Pelham Community Church | A4/2014P | GRANTED | 3 | 16 |
| <u>Applications for Consent:</u> | | | | |
| Jonathan Neil Harvey & Kim Harvey | B4/2014P | REFUSED | 5 | 21 |

Minor Variance Applications:

The following minor variance applications were dealt with by the Committee:

1. **Mountainview Homes (Niagara) Ltd, File No. A1/2014P:**

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. The required rear-yard setback distance in an RM1 Zone 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 applicants are 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 whereas 6 metres is required.

Representation:

Jon White, agent, appeared on behalf of the application.

Correspondence:

Town of Pelham Planning Department
Town of Pelham Public Works & Utilities Department

Comment:

Mr. White advised that he has nothing more to offer than the information provided in the comments. The customer has requested a larger porch, which led to this application for minor variance. There were no comments offered by members of Committee.

Decision:

Moved by Member Woods; Seconded by Member Lockey:

Relief is requested from Section 6.35(c) to permit a total encroachment of 2.65 metres for the proposed deck resulting in a rear-yard setback distance of 4.85 metres whereas 6 metres is required is hereby GRANTED, based on the following reasons:

- 1. The variance is minor in nature as the increased encroachment of the proposed 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 orientation of the proposed deck will be located on the north east side of the dwelling and thus is not likely to create any shadowing from the roofline nor will it encroach on the neighbours private amenity space to the south.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**
- 4. The proposal is desirable for the appropriate development and/or use of the land as the amenity area will be maintained and 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.**
- 6. No objections were received from commenting agencies or abutting property owners.**

CARRIED

2. Randy Mauro, File No. A2/2014P:

Purpose of the Application:

The subject land is zoned Residential 1 R1 in accordance with Pelham Zoning By-law 1136(1987), as amended. Relief is requested from Section 6.1(c) to allow a maximum height of an accessory building (a garage) of 4.05 metres whereas 3.7

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metres is allowed. The applicant is also requesting relief of Section 6.1(d) to allow a maximum lot coverage for accessory buildings of 11.2% whereas 10% is allowed to accommodate a garage and storage shed.

Representation:

Randy Mauro appeared on behalf of the application.

Correspondence:

Town of Pelham Planning Department
Town of Pelham Public Works & Utilities Department

Comment:

Member Woods questioned how the garage was built different then it was specified on the building permit. Mr. Mauro advised that the builder ended up with wrong set of plans as several were made, an error was recognized when the Town's Building Inspector visited the site.

Decision:

Moved by Member Lockey; Seconded by Member Woods:

Application for relief of Section 6.1(c) to allow a maximum height of an accessory building (a garage) of 4.05 metres whereas 3.7 metres is allowed, is hereby GRANTED, and

Application for relief of Section 6.1(d) to allow a maximum lot coverage for accessory buildings of 11.2% whereas 10% is allowed, is hereby GRANTED, based on the following reasons:

- 1. The variance is minor in nature as the peak of the building is not considered to negatively impact the adjacent properties or create an undesired appearance.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**
- 4. The proposal is desirable for the appropriate development and/or use of the land as the scale and orientation of the garage is consistent with the accessory structures located on neighbouring residential properties.**
- 5. This application is granted without prejudice to any other application in the Town of Pelham.**

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6. No objections were received from commenting agencies or abutting property owners.

This decision is subject to the following condition:

- 1. That the applicant amend the building permit prior to the continuation of construction, to the satisfaction of the Town of Pelham Chief Building Official.**

CARRIED

3. Trustees of Pelham Community Church, File No. A4/2014P:

Purpose of the Application:

The subject land is zoned I-72 in accordance with Pelham Zoning By-law 1136(1987), as amended. Relief is requested from Section 25.2(d) to allow a minimum front yard setback of 3.0 metres whereas 8.0 metres is required to accommodate the proposed addition to the existing church.

Representation:

Mark Shoalts, agent, appeared on behalf of the application.

Correspondence:

Town of Pelham Planning Department
Town of Pelham Public Works & Utilities Department
Niagara Region Development Services Division
Niagara Peninsula Conservation Authority

Comment:

Mr. Mark Shoalts advised that some preliminary work has been completed on the septic system. The work will not be disturbing the Region's waterline. The variance being considered for front yard setback is well behind where existing church is currently setback at a legally non-conforming distance.

There were no comments offered by members of Committee.

Decision:

Moved by Member Woods; Seconded by Member Lockey:

Application for relief of Section 25.2(d) to allow a minimum front yard setback of 3.0 metres whereas 8.0 metres is required is hereby GRANTED,

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based on the following reasons:

- 1. The variance is minor in nature as it will align appropriately with the existing structure and will not negatively affect site requirements such as parking or septic system (with conditions fulfilled).**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**
- 4. The proposal is desirable for the appropriate development and/or use of the land as the historical and rural appearance of the church will be enhanced without compromising any site requirements or negatively impacting and adjacent properties.**
- 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.**

This decision is subject to the following condition:

- 1. That the applicant obtain all necessary permits relating to the septic system to the satisfaction of the Niagara Region Development Services Division.**

CARRIED

Consent Application:

The following consent application was dealt with by the Committee:

- 1. Jonathan Neil Harvey & Kim Harvey, File No. B4/2014P:**

Purpose of the Application:

Application is made for consent to partial discharge of mortgage and to convey 0.69 hectare of land for continued use of the dwelling known as 2910 Effingham Street. 0.63 hectare of land (Part 2) is to be retained for single family residential use, for the dwelling municipally known as 2950 Effingham Street.

Representation:

Jonathan and Kim Harvey appeared on behalf of the application.

Correspondence:

Town of Pelham Planning Department

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Town of Pelham Public Works & Utilities Department
Town of Pelham Corporate Services Department
Niagara Region Development Services Division
Niagara Peninsula Conservation Authority
Niagara Escarpment Commission
John Cairns

Comment:

In response to the correspondence read, Mrs. Harvey advised that she and Mr. Harvey have been in contact with all of their neighbors throughout the time that they have owned the property. The applicants understand the concerns with preservation of the area and intend to preserve the property and reside on it for a long time. Mrs. Harvey detailed that any development required on the site (for the property known as 2910 Effingham Street) is complete, and no further development is proposed. Mrs. Harvey addressed statements from the correspondence received which suggests that a favorable decision by the Committee would set a precedent in the Town. As Mrs. Harvey was assured by staff, each application submitted to the Committee of Adjustment is made independently of any other and is considered on its own merits; therefore the suggestion of a precedent is not relevant.

The applicants advised Committee that they worked hard to transfer existing materials to the new location for the second home on the property. Although the Harvey's were required to bring the home into conformity with the Ontario Building Code, they maintained the same footprint as the original home. Mr. and Mrs. Harvey were granted the ability to increase the height of the home in their development permit received from the Niagara Escarpment Commission (NEC). The residential use of the property has not changed and the applicants feel it would be more suitable to ownership rather than rental.

The applicants advised that it is their desire to live in the dwelling which has been relocated to 2910 Effingham Street. The portion of the application which references the partial discharge of a mortgage is a legal portion. While they understand the by-laws and policies that affect this property and the desire to protect the NEC lands, they have a unique property that is not large enough to farm with two legally non-conforming dwellings. Mrs. Harvey advised that the bodies of the government that exist to protect the escarpment have no issue with the consent. Part of the development permit process involved the Harveys agreeing to a tree savings plan in accordance with the existing NEC policies. In preconsultation meetings, the Harveys understood that their plan does not meet the policies for consent in Agricultural areas, however they feel that the application does lend itself to practicality and common sense. Mrs. Harvey read from an email received from the Town's Planner in which this statement was echoed.

Mr. Morgan Ketler of 2872 Effingham advised Committee that he feels what the

Harvey's have done to the property is a good thing. They have improved the cottage (2910 Effingham Street) which was an eyesore for many years. Mr. Ketler has observed that the applicants are very much focused on protecting the land and they have improved the property significantly.

Member Woods questioned the size of the dwelling known as 2950 Effingham Street. Mr. Harvey advised that is approximately 2700 square feet. Member Woods also questioned whether the requirements for septic systems for both dwellings would be met should the consent be granted. Mr. Harvey advised that the Regional correspondence addressed the fact that the two proposed lots are large enough to wholly contain a septic system and a replacement system if needed.

Chair, Member DiMartile advised that he does not understand why the applicants obtained the development permit and moved the second dwelling prior to submitting an application for consent to the Town of Pelham. Mrs. Harvey advised that that prior to purchasing the property they spoke with the NEC to determine whether the two homes were legal and if rental is possible. They questioned the NEC about the possibility of moving the rental dwelling to better locate it on the property. The NEC advised that they would not necessarily say no, as long as the use of the second dwelling was not proposed to change. The applicants believed that the NEC was the governing authority for the land and did not realize until they inquired about the possibility of consent that this process was done by the local municipality. Until the development permit was approved and the dwelling was relocated, they were not aware of the local or Regional involvement in consent, nor were they aware of their property being under a Greenbelt designation.

Chair, Member DiMartile advised that he feels it is necessary to respect the policies and information that is presented to the Committee by commenting agencies. Although the applicants have explained the sequence of events, Member DiMartile expressed that the Committee cannot form an opinion based on an account of conversations that took place. Mrs. Harvey offered that they understood that in order to apply for consent, they would be amending a development permit through the NEC and the Town would be a commenting agency. They were unaware of the need to apply to the Town of Pelham.

Member Woods commented that in his experience, properties north of Highway #20 in the Town of Pelham are typically subject to the policies of the NEC as it is the overarching governing body. Member Woods stated that he sees no objection to the proposed consent from the NEC and Niagara Peninsula Conservation Authority. Chair, Member DiMartile commented that the Committee must make a decision based on the policies discussed in the Town's Planning Report and the Regional report. Mr. Harvey then commented that the NEC has no problem with the proposed consent and has lended support to their application as any concerns about protection of the land have been satisfied.

Decision:

Moved by Member Woods; Seconded by Member Lockey:

Application for consent to convey and partial discharge of mortgage 0.69 hectare of land, shown as Part 1 on the drawing submitted, being part of Lot 2, Concession 1 in the Town of Pelham is hereby GRANTED, based on the follow reasons:

1. The parcel has maintained two legally non-conforming dwellings used for residential purposes with no active agricultural operations being maintained.
2. No objections were received from the Niagara Peninsula Conservation Authority or Niagara Escarpment Commission.
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.

And is subject to the following conditions:

1. 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.
2. That the final certification fee of \$350, payable to the Treasurer, Town of Pelham, be submitted to the Secretary-Treasurer.

DEFEATED

Chair, Member DiMartile stated that he realizes how unique this property is, however he must respect the policies of the Town, Region and Province and ensure that those policies are followed. He advised the applicants that if their application is refused, they will have the option to appeal the Decision to the Ontario Municipal Board. Member Lockey stated that he seconded the motion in order to make the motion open to discussion, however he agrees with Member DiMartile statements regarding the importance of the policies that apply to the property.

Moved by Member Lockey; Seconded by Member DiMartile:

Application for consent to convey and partial discharge of mortgage 0.69 hectare of land, shown as Part 1 on the drawing submitted, being part of Lot 2, Concession 1 in the Town of Pelham is hereby REFUSED, based on the follow reasons:

1. **The application does not conform to the policies of the Town of Pelham Official Plan, Regional Policy Plan and Provincial Policy Statement.**
2. **Objections to this proposal have been received from commenting agencies and neighbouring property owners.**

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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

Adjournment:

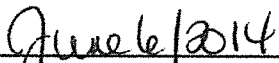
There being no further business, the Chair declared the hearing adjourned.



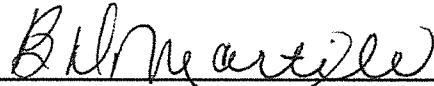
B. DiMartile
Chairman



Jordan Mammoliti
Deputy Clerk/Asst. Secretary-Treasurer



Date Approved
/jm



Hearing Chair