

Committee of Adjustment MINUTES

Committee Of Adjustment Hearing 7/2014

Meeting Type : Committee of Adjustment Hearing

Date : Wednesday, September 03, 2014

Location : Town of Pelham Municipal Building - Council Chambers

MINUTES

ATTENDANCE

Present were:

Hearing Chair

- Brian DiMartile

Hearing Panel

- Mel Dove
- Rick Hatt

Deputy Clerk / Assistant Secretary-Treasurer

- Jordan Mammoliti (portion of the meeting)

Town Clerk / Secretary Treasurer

- Nancy J. Bozzato (portion of the meeting)

Other

- Applicants and/or Agents as indicated in minutes
- Interested residents

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

Chair Dimartile called the meeting to order at 4:00 pm.

DISCLOSURE OF PECUNIARY INTEREST AND GENERAL NATURE THEREOF

There were no disclosures of pecuniary interest by the members present.

**FILE A15/2014P -
JOHN & LINDA
ELLSWORTH**
(APPLICATIONS FOR
MINOR VARIANCE)

Purpose of the Application:

Application is made for consent to convey 419.1 square metres of land (Part 1) to merge with the lands to the north of the property. 8.86 hectares of land with a dwelling, accessory building and greenhouse (Part 2) will be retained for continued agricultural use.

Representation:

Hank Nauta, agent represented on behalf of the application.

Correspondence:

Town of Pelham Community Planning & Development Report

Appendices:

- Town of Pelham Public Works
- Town of Pelham Building

Comment:

Mr. Nauta commented that the owners requested to build a front porch that is practical for use and function, which resulted in a location closer to the property line than what is allowed in the Zoning By-law.

Member Dove questioned what work has been completed at the home already. Mr. Nauta advised that a building permit was issued previously for an addition to the south side of the home.

Resolution #CA20140903.1001

Moved By: Member Dove Second By: Member Hatt

Application for relief of Section 14.2(d) to allow a front yard setback of 3.66 metres whereas 6.5 metres is required is hereby GRANTED.

This decision is based on the following reasons:

1. **The variance is minor in nature as the front yard setback adjustment will not negatively impact on the adjacent uses or substantially remove any of the amenity space on the subject parcel. The variance is also considered minor as the orientation of the proposed covered porch will be located in the centre of the dwelling, 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 front-yard setback is minor in nature as the reduction in front-yard setback will maintain sufficient open space.**
3. **The intent of the Official Plan is maintained as the use is permitted in the "Urban Living Area / Built Boundary" designation.**
4. **The proposal is desirable for the appropriate development and/or use of the land as the scale of the proposed covered porch 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.**
6. **No objections were received from commenting agencies or**

abutting property owners.

CARRIED

**FILE B9/2014P -
STANLEY
RUTYNA**
(APPLICATIONS FOR
CONSENT)

Purpose of the Application:

Application is made for consent to convey and partial discharge of mortgage 0.48 hectares of land for continued single family residential use. 2.89 hectares of vacant land, shown as Part 2 on the drawing submitted, is to be retained for agricultural use.

Representation:

Alan Heywood and Denis Savriga represented on behalf of the application.

Correspondence:

Town of Pelham Community Planning & Development Report

Appendices:

- Town of Pelham Public Works
- Town of Pelham Building
- Town of Pelham Corporate Services
- Niagara Region Planning & Development Services
- Niagara Peninsula Conservation Authority
- W. Savage
- D. Bourgeois

Comment:

Mr. Heywood addressed correspondence relating to the survey sketch, noting that Provincial requirements mandate only that the sketch show how the subject land is being used and is not intended to show zoning. The severance sketch was prepared with these regulations in mind.

Mr. Heywood acknowledged the comments received by the Niagara Peninsula Conservation and suggested that their concerns could be addressed through a condition of consent, should the Committee grant the application. He suggested that the size of the parcel, as suggested by the Conservation Authority, could be accomplished through an imposed condition; alternatively an easement could be established over the additional lands, or the Hydrogeological Study could be mandated as a way to satisfy the Conservation Authority.

With regard to the applicable Provincial, Regional and Local Municipal policies relevant to this application, Mr. Savriga noted that he understands that the original circulation of his supplementary information relating to the application was only fully provided today, so he provided an overall review to justify the application's merits. Mr. Savriga informed the Committee that he was formerly a planner with the City of Niagara Falls and has extensive municipal planning experience.

Mr. Savriga pointed out that there is a tremendous amount of development in the area of the subject lands. The applicant is trying to encourage the Region to allow the area to be recognized as a Hamlet, and suggested that the Town either missed this area when reviewing the new Official Plan, or has other opportunities to approve a Hamlet under the new Official Plan. The difficulty facing the applicant is that because of the dual zoning on the property, development potential is limited. For example, if the property were to be developed agriculturally, it would be encumbered by a commercial component. In

contract, anyone who wants to develop commercially faces the fact that the agricultural part is attached.

Notwithstanding his report to justify a Hamlet designation, he requested that staff review the Greenbelt Plan and certain components were brought to the attention of Planners at Region and the Town relating to legal non-conforming uses and subsequent planning applications. The subject lands were zoned prior to 2004, however a consent application did not proceed at that time.

Mr. Savriga read excerpts from the Greenbelt Plan stating that where a zoning by-law was amended prior to 2004 to permit land uses, the approval may continue to be recognized and any further applications required under the Planning Act to implement a use permitted are not required to conform with this plan. He suggested that this portion of the Greenbelt Plan provide the opportunity for situations such as the subject application. He noted that the applicant had prepared an application formerly but did not submit it or complete it. Mr. Savriga stated that he prepared his supplementary report on basis of making a designation application to the Region. He indicated that this area is on the Region's radar for a Hamlet designation, and suggested that Town Council is also interested in doing something similar in this area. He noted that the Town has invested a considerable amount of money in this area in improvements, and submitted that the application fits with Council's direction. He noted that there was an uncompleted application that should have accompanied the zoning application several years ago - that being the consent proposal.

Mr. Savriga concluded that in his opinion, the surrounding area lands do resemble a Hamlet and he proceeded to give a history on the early occupation of the lands by the Empire Loyalists, noting that they catered to agricultural lands through businesses such as a lumber yard, etc. The subject and surrounding lands have a very steep slope, making them difficult to farm. He requested committee to consider the application based on the Greenbelt Policy and because of the pre-existence of the use before 2004 he submitted that this is appropriate to allow the consent.

Members of the public - persons were present but no one spoke to the application.

Member Hatt stated that this application does not present a simple matter for him, notwithstanding the fact that an application for consent was not followed through with in 1987. He noted that the applicant also has lands with two separate designations which is concern enough to give some credence to this application. However, on the other hand, if approval is given a lot now would qualify for single detached construction on the agricultural piece, which is not desirable for agricultural lands

Mr. Savriga countered that the applicant could build a house on the agricultural parcel but would have two buildings on one lot, but noted that they could convert the house on the commercial parcel to a commercial use. He suggested that when one is trying to finance these things and generate a property sale, the dual zoning is a deterrent. He suggested that no agricultural development will go ahead as it is held up by the commercial part, and visa-versa. He opined that until a consent is granted the parcel will remain unchanged, but suggested that this Committee can be part of the planning process envisioned in the Official Plan. He did note that should Committee approve the application, Town staff will likely prepare a report to Council to see if there is an appetite for appeal. He suggested that the opportunity exists and the Committee is permitted to grant the application. He said that Pelham is trying to encourage this community to become something special and noted that was a vibrant community in the past. There are businesses in this area, and there should be an opportunity to encourage growth.

Mr. Rutyna addressed the Committee, stating that he knows the Town has invested in improvements at the corner of Canboro and Effingham Roads. However, one problem in

the area is that the storekeepers across the road have no parking. They have approached him and asked him to do something with his property, resulting in a meeting with storekeepers where it was agreed with businesses to request the Region and the Town of Pelham to designate this area of Ridgeville as a Hamlet. He read from a letter in this regard, submitting a copy for the record. If the severance succeeds, any new owner could use this land for parking which would contribute to the vibrancy of the area.

Mr. Savriga suggested that a decision favouring this application is small compared to designating the area as a Hamlet, which is a lengthy process. Because of the historical components relating to this area he suggested that the Committee can support approval, given that the Greenbelt Plan supports that historical areas be pursued and this is a perfect opportunity to add positive features into this community.

In response to a question by Committee, Mr. Savriga stated that it would be difficult for a business to be established on the commercial portion of the lands, with the agricultural portion being leased to a farming operation, as mortgaging options would be difficult given the dual zoning.

Mr. Savriga also suggested that the application is a simple request although it does have complications, and he noted that the Region did not start this report until last Friday and thus they may have missed the provision in the Greenbelt Plan he earlier referenced. This information would be considered in 2015 when a Hamlet designation is considered;

In response to a question by Member Dove, Mr. Rutyna stated that the agricultural portion is essentially wasteland and is not used due to the sandy soil. He is presently retired and as such, has no plans for re-development of the subject parcel. He stated that the agricultural lands were previously rented out, however the lands are too dry for agricultural production. He stated that he is not financially in a position to make any significant improvements to the lands, and wants to see the severance succeed so that he can provide for estate planning. He stated that he is aware that the Hamlet designation might come to fruition in 2015, however he is not willing to wait this long.

In response to a question by Member Hatt, he provided a synopsis of the fruit tree use formerly on his property, noting that the trees were diseased with Black Knot and so were all removed and destroyed.

Member Dove noted that although the Conservation Authority is requesting a hydrogeological study, all of the houses that are situated downgrade are connected to municipal water and thus do not use the water in the aquifer for drinking water.

Chair DiMartile did not support the application as he was of the opinion that the Committee has an obligation to respect the Official Plan, the Regional Policy Plan and the Provincial Policy Statement, and not only the Greenbelt Plan. He also suggested that he thought the agricultural portion could still be profitable.

Resolution #CA20140903.1002

Moved By: Member Hatt Second By: Member Dove

Application for consent to convey and partial discharge of mortgage 0.48 hectares of land of land, shown as Part 1 on the drawing submitted, being part of Lot 6, Concession 8 in the Town of Pelham is hereby GRANTED, subject to the following conditions:

- 1. That the applicant obtain approval for all necessary zoning by-law amendments to the satisfaction of the Town of Pelham Director of Community Planning and Development.**
- 2. That the concerns of the NPCA relating to protection of groundwater features be sufficiently addressed through a**

hydrogeological study and appropriate mitigation measures, to the satisfaction of the Authority. Should a lot reconfiguration be required, a new consent application will be necessary.

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. The Committee was satisfied that the surrounding area of Ridgeville sufficiently resembles a Hamlet and that approval will allow the separately zoned portions of the land to be reflected in the parcels resulting from this approval.
2. The concerns expressed by the Niagara Peninsula Conservation Authority will be satisfied through conditions imposed.

CARRIED

**FILE B11/2014P -
RALPH &
DENISE MASON**
(APPLICATIONS FOR
CONSENT)

Purpose of the Application:

Application is made for consent to convey 7.367 hectares of land to merge with the lands abutting to the north of the subject property (Part 1, municipally known as 2753 Centre Street). 2.75 hectares of land (Part 3) is to be retained for single family residential use.

Representation:

Cheryl Selig, agent represented on behalf of the application.

Correspondence:

Town of Pelham Community Planning & Development Report

Appendices:

- Town of Pelham Public Works
- Town of Pelham Corporate Services
- Town of Pelham Building
- Niagara Region Planning & Development Services
- Niagara Peninsula Conservation Authority
- Niagara Escarpment Commission

Comment:

Ms. Selig advised that she is satisfied that the Committee was provided information required to make a decision.

Resolution #CA20140903.1003

Moved By: Member Dove Second By: Member Hatt

Application for consent to convey 7.367 hectares of land, shown as Part 2 on the drawing submitted, being part of Lot 9, Concession 1 in the Town of Pelham is hereby GRANTED.

This application is subject to the following conditions:

1. That the applicant decommissions the private sewage system for the dwelling known as 2752 Centre Street to the satisfaction

of Niagara Regional Development Services.

2. 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.
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. 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 #CA20140903.1004

Moved By: Member Hatt Second By: Member DiMartile

MOVED THAT the minutes of the Committee of Adjustment Hearing 6/2014 held on 2014/08/06 be adopted as printed, circulated and read.

CARRIED

ADJOURNMENT

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

B. DiMartile, Chair

Jordan Mammoliti, Assistant Secretary-Treasurer

Date Approved

Hearing Chair