

Committee of Adjustment**Minutes**

Meeting #: 12/2019
Date: Tuesday, December 3, 2019
Time: 4:00 pm
Location: Town of Pelham Municipal Office - Council Chambers
20 Pelham Town Square, Fonthill

Members Present Donald Cook
Bill Sheldon
Sandra Marsh

Staff Present Holly Willford

Others Present Applicants, Authorized Agents and other interested parties of the public.

1. Attendance

Applicants, Authorized Agents and Interested Citizens

2. Call to Order, Declaration of Quorum and Introduction of Committee and Staff

Noting that a quorum was present, Chair Cook called the meeting to order at approximately 4:00 pm. The Chair read the opening remarks to inform those present on the meeting protocols and he introduced the hearing panel and members of staff present.

3. Disclosure of Pecuniary Interest and General Nature Thereof

There were no pecuniary interests disclosed by any of the members present.

4. Requests for Withdrawal or Adjournment

None.

5. Applications for Minor Variance**5.1 A26/2019P - 1611 C Lookout Street****Purpose of Application**

Application for relief, pursuant to Section 6.1 (c) “Maximum Height” to a permit an accessory building height of 4.9m whereas the by-law permits 3.7m.

Representation

The Applicant was present.

Correspondence Received

1. Town of Pelham Planning Department
2. Town of Pelham Public Works
3. Town of Pelham Building Department
4. Anna Pliousnina
5. Betty Lou and Andrew Lynds
6. Eric Hill
7. Garry and Roberta Kivell
8. Georgina George

Applicant's Comments

The Applicant advised the larger paved area is for his oldest son whom is in a wheelchair and requires hard surfaces for accessibility. The applicant further indicated the purpose of the garage height is to allow a wheelchair accessible van within the garage. The location of the detached garage is intended to not impede views from the neighboring property.

Public Comments

There were no verbal comments received from the public.

Members Comments

Committee Member's discussed the amount of proposed hard surface on the property and the proposed drainage plan. The applicant indicated the drainage plan was prepared by Upper Canada Consultants and further indicated the property would have a swale and drainage would flow to a retention pond. Further discussion regarding the proposed drainage continued.

A Member requested what type of medium to large capillary trees being proposed as condition would be required. In response, the Town planner,

Mr. Thompson indicated any tree from the Town's tree planting list could be planted. Further discussion commenced regarding the requirement of the required trees to be coniferous or deciduous trees. Through discussion, the applicant agreed he would plant coniferous trees. It was stated by a Member he wished to have a landscape plan to be submitted as a condition and the condition regarding the two capillary trees be amended to indicate the trees must be coniferous.

Discussion regarding the need to potentially defer the application until a finalized drainage plan is received by the Town commenced. The Assistant-Secretary Treasurer, Ms. Holly Willford advised the Committee a drainage plan, to the satisfaction of the Director of Public Works would be required at building permit stage.

Furthermore, discussion regarding potentially requiring the applicant, as a condition, to complete an easement agreement or mutual drainage agreement with other neighbouring properties was discussed. In response, Ms. Willford indicated this may be an unreasonable condition as it would be difficult or may be impossible for the applicant to achieve this. The Committee agreed and determined this would not be requested. The Committee determined a landscape plan and drainage plan would be included as conditions of the application.

Moved By Bill Sheldon

Seconded By Sandra Marsh

THAT the proposed conditions shall be amended to include:

- 1. Submit an Overall Lot Grading & Drainage Plan to the satisfaction of the Director of Public Works, and that the drainage shall not negatively affect the lands to the east;**
- 2. Submit a landscape plan for review and approval to the satisfaction of the Director of Community Planning & Development; and**
- 3. Plant two medium or large caliper coniferous trees between the rear lot line and proposed detached garage.**

Carried

Moved By Bill Sheldon

Seconded By Sandra Marsh

Application for relief, pursuant to Section 6.1 (c) “Maximum Height” to a permit an accessory building height of 4.9m whereas the by-law permits 3.7m, is hereby: GRANTED.

The above decision is based on the following reasons:

- 1. The variance is minor in nature given the semi-urban context, scale of the neighbourhood’s rear yards, building location and steep topography.**
- 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 use of the land as it will provide enhanced storage.**
- 5. This application is granted without prejudice to any other application in the Town of Pelham.**
- 6. The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.**

The above decision is subject to the following conditions:

- 1. That Prior to the issuance of Building Permits written documentation be provided to the satisfaction of the Chief Building Official that the applicant has submitted a comprehensive Overall Lot Grading & Drainage Plan to the satisfaction of the Director of Public Works, and that the drainage shall not negatively affect the lands to the east.**
- 2. That all necessary building permits are required prior to construction commencing to the satisfaction of the Chief Building Official.**
- 3. That the applicant shall within 6 months from the date of this decision, or prior to building permit, plant a minimum of two (2) medium or large caliper coniferous trees between the rear lot line**

and proposed detached garage. One tree shall be located north of, and the other south of the existing rear yard tree (which shall remain), the trees shall be equally spaced from the existing tree and their respective side lot lines, while not impacting any drainage swales and to the satisfaction of the Director of Community Planning & Development.

4. Prior to the issuance of building permit that a landscape plan be submitted for review and approval to the satisfaction of the Director of Community Planning & Development

Carried

5.2 A27/2019P - 997 Canboro Road

Purpose of Application

Application for relief of 6.14 (a) "New Development in or Adjacent to An Agricultural 'A' Zone or Special Rural 'SR' Zone" to permit a reduction in the minimum Distance Separation 1 formula to facilitate construction of a dwelling within 201m of a livestock or poultry operation whereas the by-law requires a 300m setback.

Representation

The applicant and his authorized agent, Craig Rohe from Upper Canada Consultants was in attendance.

Correspondence Received

1. Town of Pelham Planning Department
2. Town of Pelham Public Works
3. Town of Pelham Building Department
4. Niagara Region
5. Henk and Helen Fennema

Applicant's Comments

The authorized Agent, Mr. Rohe indicated he and his client agrees with the Planning Departments report. Mr. Rohe stated there is a general base line for MDS, being 300m, however there is a calculation that can be done

for minor variance applications. He has done the calculation and the application is requesting that calculated amount, being 201m.

Public Comments

Cynthia Kaman indicated she is concerned about future development and how future development may affect her property. She indicated she purchased the neighbouring property for retirement. The Chair indicated her concerns go beyond the requested variance and the Town would not be able to indicate what 'future' development may take place on the property. Currently the Town is looking at the MDS variance being requested.

Henk Fennema indicated he is the owner of the neighbouring chicken barn and indicated he is concerned about future owners of this property complaining about farming odours.

Helen Fennema requested for clarification as to what the potential owner plans to do with the property. In response, the applicant indicated he wishes to build a home and a garage and live on the property. The rest of the property will be farmed or rented to a farmer.

Members Comments

A Member of the Committee asked if the owner of the poultry barn wished to explain his operation, notwithstanding this application he would have to request a minor variance or zoning by-law amendment. In response, Mr. Thompson indicated that is correct. The owner of the poultry barn would be required to comply with MDS 2 calculations and if the owner could not comply would be required to request a minor variance.

A Member of the Committee also stated to the public there will be a condition registered on title for all future owners to be made aware that this property is in close proximity to a poultry barn.

Moved By Sandra Marsh

Seconded By Bill Sheldon

Application for relief of 6.14 (a) "New Development in or Adjacent to An Agricultural 'A' Zone or Special Rural 'SR' Zone" to permit a reduction in the minimum Distance Separation 1 formula to facilitate construction of a dwelling within 201m of a livestock or poultry operation whereas the by-law requires a 300m setback., is hereby: GRANTED.

The above decision is based on the following reasons:

- 1. The variance is minor in nature overall given the lack of nuisance complaints with other existing dwellings in close proximity to the east and the prevailing westerly winds directing odour from the nearby livestock operation to the east.**
- 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 it would provide for the development of a single detached dwelling.**
- 5. This application is granted without prejudice to any other application in the Town of Pelham.**

The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.

The above decision is subject to the following conditions:

- 1. That all necessary building permits are required prior to construction commencing to the satisfaction of the Chief Building Official.**
- 2. Obtain approval from the Niagara Region Private Sewage Systems division for septic system compliance prior to building permit application.**
- 3. The applicant shall enter into a Development Agreement with the Town for the purposes of developing the lot to include:**
 - 1. Obtaining an Entrance Permit from the Public Works Department for the installation of a driveway / culvert, as applicable, in accordance with Town standards.**
 - 2. An owner warning clause specifying that, “The owner acknowledges that their property is located within a 300 metre baseline Minimum Distance Separation spatial requirement in the Town’s Zoning By-law and that they may potentially, from**

time to time, experience unpleasant odours from an existing adjacent livestock operation.”

3. An owner warning clause stating that, “Should deeply buried archaeological remains / resources be found on the property during construction activities, the Heritage Operations Unit of the Ontario Ministry of Tourism, Culture & Sport and the Owner’s archaeology consultant shall be notified immediately. In the event that human remains are encountered during construction, the Owner shall also immediately notify the Police or coroner and the Registrar of Cemeteries of the Ministry of Small Business and Consumer Services.”
4. Restrictive covenant that the attached garage shall perpetually be prohibited from being converted into residential living space due to its location within the calculated MDS radius.

Carried

6. Applications for Consent

None.

7. Minutes for Approval

SM and BS

Moved By Sandra Marsh

Seconded By Bill Sheldon

That the minutes of the August 13, 2019, Committee of Adjustment Hearing be approved.

Carried

8. Adjournment

Moved By Sandra Marsh

Seconded By Bill Sheldon

BE IT RESOLVED THAT this Meeting of the Committee of Adjustment Hearing be adjourned until the next regular meeting scheduled for January 14, 2020 at 4:00 pm.

Carried

Don Cook, Chair

Secretary-Treasurer, Nancy J. Bozzato