

Committee of Adjustment**Minutes**

Meeting #: Special CofA 2/2020
Date: Tuesday, February 25, 2020
Time: 5:30 pm
Location: Town of Pelham Municipal Office - Council Chambers
20 Pelham Town Square, Fonthill

Members Present Donald Cook
Bill Sheldon
Bernie Law

Members Absent John Klassen
Sandra Marsh

Staff Present Nancy Bozzato
Holly Willford

Others Present Barb Wiens
Curtis Thompson
Derek Young

1. Attendance

Applicant, agent and Interested members of the public.

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 5:30 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.

The Chair requested the agenda be amended to hear application B11/2019P prior to minor variance files A28/2019P and A29/2019P. The Committee Members agreed to amend the agenda.

Moved By Bill Sheldon

Seconded By Bernie Law

THAT the Agenda be amended to hear consent application B11/2019P prior to hearing minor variance applications A28/2019P and A29/2019P.

Carried

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 Consent

5.1 B11/2019P - 20 Alan Crescent

Purpose of Application

Application is made for consent to partial discharge of mortgage and to convey 432.82 square metres of land (Part 1) for construction of a residential dwelling. 835.94 square metres of land (Part 2) is to be retained for continued use of the dwelling known as 20 Alan Crescent.

Representation

The Applicant's authorized agents were present.

Correspondence Received

1. Town of Pelham Planning Department, January 14, 2020 Meeting
2. Town of Pelham Planning Department, Addendum to Recommendation Report
3. Town of Pelham Public Works
4. Town of Pelham Building Department
5. Bell Canada
6. Deborah and Keith Powell - February Comments
7. Ted and Angeline Galotta - February Comments
8. Jim Marando - February Comments
9. Tony and Yolanda Bostock - February Comments

10. Jan Chambor - - February Comments

11. Upper Canada Consultants Presentation - Please refer to file
B11/2019P - 20 Alan Crescent from January 14, 2020 Meeting

** For Copies of All Previous Public Comments Please See January 14,
2020 Agenda**

Applicant's Comments

The Chair asked the applicant's authorized agent, Mr. Craig Rohe of Upper Canada Consultants, if he wished to speak on the application. In response, Mr. Rohe indicated he agrees with the additional information provided by the Town of Pelham Planning staff and agrees with the proposed conditions. Mr. Rohe indicated the applicant's lawyer, Mr. Patrick Maloney, from Sullivan Mahoney, is present and wishes to speak on the matter. Mr. Maloney stated he would like to address all three applications at once. Mr. Maloney indicated that the Committee must make a decision based on the planning merits of the applications and that only expert evidence should be heard. Mr. Maloney stated the expert evidence heard by the Committee is that of Mr. Rohe and the Town's planning staff, Ms. Wiens and Mr. Thompson. He stated he understands the concerns of the residents; however, the application is consistent with planning policy. Mr. Maloney also indicated the applicant could have applied for a higher density application however choose to apply for a single detached dwelling. Mr. Maloney asked that the Committee approve the applications. He further indicated, if the Committee feels the applicant should seek a rezoning then he asked the Committee to approve the consent and the applicant would seek a rezoning.

Public Comments

The Chair opened the floor to the public and asked that only new matters and information be discussed.

Jim Marando stated everything he is hearing is aimed at policy. Mr. Marando discussed the Town of Pelham's Zoning By-Law and indicated by-laws are to protect the residents. He stated he believes the zoning by-law must not be compromised and that these applications are a direct violation of the Zoning By-law. He indicated he thinks the matter should be before elected officials and that someone should look at limiting intensification. Mr. Marando said there is good intensification and bad

intensification and urged the Committee to not render a decision and rather have the applicant request a zoning amendment.

Ted Galotta voiced concerns regarding storm water management issues within the neighbourhood. Mr. Galotta indicated he believed the application not to be minor in nature and stated this property / neighbourhood should not be compared to new subdivision developments. He stated he did not believe the application is desirable or has underutilized space; indicating that space is a backyard. Mr. Galotta stated an application may be refused if the application is considered to not be minor as it is too large or too important. Mr. Galotta further advised he has reviewed other municipalities' Official Plans and contacted the Ministry and discussed this application and the Town's intensification requirements. He further stated the neighbours would be duly affected if this application is granted. He voiced privacy concerns as well. Lastly, Mr. Galotta discussed the planning department's recommendation report for this application and compared to another application with regards to the criteria analyzed and invited planning staff to reconsider their recommendation.

The Chair indicated the Committee has the complete package submitted by Mr. Galotta. The Chair invited staff to respond. In response, Derek Young, Supervisor of Engineering discussed the Town's stormwater infrastructure and explained the improvements to be made to the system in the future. Barb Wiens, Director of Community Planning and Development indicated a number of points made by Mr. Galotta are addressed within the planning department's recommendation report. Ms. Wiens did further discuss the Town's requirement for intensification and associated policies.

Foster Zanutto indicated he has several concerns regarding this application and proposed development including: zoning by-law issues, establishing a precedent, removal of trees, drainage issues, aging infrastructure, demolishing a good home, change of character of the neighbourhood, etc. Mr. Zanutto indicated he has written a letter to the editor in the local paper and received several comments from people outside the subject neighbourhood in support of him. Mr. Zanutto questioned what the application is really about and if this is about the tax base. He asked the Committee to support him and the public.

Robert Jansen indicated he understands zoning is not by fixed physical boundaries and stated you will not find properties not in compliance with

the zoning by-law. In response, Curtis Thompson, Town Planner indicated the zoning-law does zone properties by physical zoning boundaries. In addition, the Chair and Ms. Wiens explained there are properties within the Town, which do not comply with the zoning, which is the purpose for the minor variance application. In addition, Mr. Jansen indicated he did not believe the planning report made fair assessments. In response, Ms. Wiens indicated the assessment is outlined in the report for the Committee's perusal.

Mr. Jansen also indicated he has concerns regarding his pool and the requirement of intensification. In response, Mr. Jansen was advised his concerns with his pool would be taken care of at building permit stage, if the proposal is approved. The Chair explained the Town's Official Plan and intensification areas outline within the said plan. Ms. Wiens further spoke on the requirement for intensification and related policies.

Mr. Jansen stated he was concerned that there is no guarantee the applicant would not build a two-story home instead of a bungalow if approved. He again referenced privacy concerns. In response, Mr. Rohe, agent for the applicant, indicated it is his applicant's intention to build a one-story home. Mr. Rohe further indicated any elevation plans would be approved by the Town. Furthermore, Ms. Wiens indicated the Town would approve the elevation plans prior to building permit and would review the plans with privacy in mind.

Members Comments

A Member asked the Secretary-Treasurer of the Committee of Adjustment, Nancy Bozzato, if he may ask the applicant's solicitor for legal advice as the lawyer has provided unsolicited legal advice at the meeting. In response, Ms. Bozzato indicated the solicitor present is the applicant's lawyer and he provided advice solicited by his client. She stressed the solicitor is present on behalf of his client and not the Town. Mr. Maloney, the applicant's solicitor, asked for clarification on the legal advice sought. He further indicated he has given his client legal advice, which is confidential and privileged, and stated he is not the Town's solicitor and does not act on behalf of the Town. In response, the Member asked if it is the solicitor's opinion that the Committee could grant the consent application conditional on a rezoning. Mr. Maloney indicated that is his opinion, and he has seen it before. In response, Mr. Sheldon made a motion to approve the consent conditional upon the rezoning of the subject land. The motion did not receive a seconder.

A Member discussed the definition of intensification being vacant and underutilized lots within previous developed areas. The member stated it is his opinion the subject lot is not vacant and/or underutilized. The member stated he agrees with a previous comment made that this application is building a house in a backyard. Furthermore, the Member stated he is of the opinion if this definition is used these types of neighborhoods would be in trouble throughout the Town. The Member indicated he has concerns with infill and cumulative negative effects, such as storm water. The Member further discussed the Town's Official Plan Policy A2.2.3 – Urban Character. He stated he was concerned with this policy and respecting the character and the stability of the neighbourhood. The Member also stated he is concerned there is no Secondary Plan in the area and the ability to integrate developments into the established area. Furthermore, the Member stated he is concerned about the social fabric of the neighbourhood and the disruption this proposal would have.

The Member stated the planning report indicated the minor variance are minor in nature as there are no adverse impacts, however the member stated he disagrees from a social community fabric, stability and a character point of view. He stated the desirability or use of the land disagrees with the planning report. The Member indicated with regard to the minor variances maintaining the intent of the zoning by-law and indicated he believes the average frontage in the neighbourhood would be 100 feet or more. The Member stated this application does not maintain the general intent of the zoning by-law in his opinion. The Member stated there are pages of reasons to not approve the minor variance applications. The Member indicated in his opinion this application is better suited as a subject of rezoning that involves the political decision makers of the Town. The Member then recapped his opinion by indicating he believes the minor variance requests are not minor in nature, do not meet the general intent and purpose of the zoning by-law, is not desirable for the lands and there are many real and potential impacts to the social fabric of the community, including the stability and character of the community. The Member stated based on his comments would like to turn down the applications.

A Member indicated he has made two site visits to the property and is concerned with rainwater, snow and leaves. The Member said his interpretation of the minor variances are that they are not minor but major. The Member indicated he would not support the applications.

A Member indicated in his opinion the planning department's report is like a checklist. He stated the Committee must consider section 51(24) of the Planning Act. He stated he disagrees with the planning report with regards to section 51(24)(c) and referenced the Town's Official Plan Policy A2.3 Urban Character. The Member indicated the application does not satisfy the goal of the official plan with regard to the character and stability of the neighbourhood and the scale and density of the neighbourhood. The Member stated he further disagrees with the planning report regarding Section 51(24)(d) as legalizing the proposed lot requires several minor variances (or zoning amendments) which individually may be considered minor, however holistically are major and together completely alter the current requirements under the R-1 Zone of the current Zoning By-Law. Moreover, the Member stated he disagrees with Section 51(24) (f) as the dimensions of the proposed severance do not keep with the existing and well-established residential neighbourhood. Finally, the Member stated he disagreed with Section 51(24) (g) as the proposed new and remnant lots require several minor variances (zoning amendments) such that the impact on the existing neighbourhood is not warranted and should not be allowed.

The Chair asked the applicant's authorized agent if he wished to speak further on the application prior to a decision being rendered. Mr. Rohe indicated he had no further comments. Mr. Maloney indicated he also had no further comments. The Chair asked the Town staff if they wished to provide further comment. Ms. Wiens indicated she has no further comments. The Chair asked the public if anyone wished to speak. In response, Mr. Zanutto asked various questions regarding the potential appeal process. In response, Ms. Bozzato provided information regarding LPAT and the appeal process.

Moved By Bernie Law

Seconded By Bill Sheldon

Application is made for consent to partial discharge of mortgage and to convey 432.82 square metres of land (Part 1) for construction of a residential dwelling. 835.94 square metres of land (Part 2) is to be retained for continued use of the dwelling known as 20 Alan Crescent, is hereby: REFUSED

This decision is based on the following reasons:

It is the opinion of the Committee of Adjustment that:

1. The application does not conform to the policies of the Town of Pelham Official Plan, Regional Policy Plan and Provincial Policy Statement, and fails to comply with the Town's Zoning By-law, more specifically with respect to:
 1. Official Plan A2.3 Urban Character as the application does not satisfy the goal of the official plan with regard to the character and stability of the neighbourhood and the scale and density of the neighbourhood.
2. 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 the Committee finds that the application does not satisfy the following Sections of the Planning Act:
 1. Section 51(24) (c) as the proposal does not conform to Section A2.3 Urban Character of the Town's Official Plan;
 2. Section 51(24) (d) as legalizing the proposed lot requires several minor variances (or zoning amendments) which individually may be considered minor, however holistically are major and together completely alter the current requirements under the R-1 Zone of the current Zoning By-Law;
 3. Section 51(24) (f) as the dimensions of the proposed severance do not keep with the existing and well-established residential neighbourhood; and
 4. Section 51 (24) (g) as the proposed new and remnant lots require several minor variances (zoning amendments) such that the impact on the existing neighbourhood is not warranted and should not be allowed.
3. The Committee of Adjustment considered all written and oral submissions and finds that, this application does not meet the Planning Act criteria, and is not consistent with the Town Official Plan.

Carried

6. Applications for Minor Variance

6.1 A28/2019P - 20 Alan Crescent (Part 1)

Please see file B11/2019P minutes for more details.

Member Sheldon brought forward a motion that the minor variance applications A28/2019P and A29/2019P be reused based on the reasons the minor variance is not minor in nature, does not meet the intent of the existing zoning by-law and is not desirable for the development or use of the land.

Moved By Bill Sheldon

Seconded By Bernie Law

Application for relief of Section 13.2 (a) “Minimum Lot Area” to permit a lot area of 432 m², whereas 700 m² is required, is hereby: REFUSED.

The above decision is based on the following reasons:

For specific reasons as stated at the hearing, it is the opinion of the Committee of Adjustment that:

- 1. The variance is not minor in nature.**
- 2. The general purpose and intent of the Zoning By-Law is not maintained.**
- 3. The proposal is not desirable for the appropriate development and/or use of the land.**
- 4. This application is refused without prejudice to any other application in the Town of Pelham.**
- 5. The Committee of Adjustment considered the written and oral comments and finds that this application does not meet the required Planning Act criteria, and is not consistent with the Town Official Plan.**

Application for relief of Section 13.2 (b) “Minimum Lot Frontage” to permit a lot frontage of 14.2 m, whereas 19 m is required, is hereby: REFUSED.

The above decision is based on the following reasons:

For specific reasons as stated at the hearing, it is the opinion of the Committee of Adjustment that:

- 1. The variance is not minor in nature.**
- 2. The general purpose and intent of the Zoning By-Law is not maintained.**
- 3. The proposal is not desirable for the appropriate development and/or use of the land.**
- 4. This application is refused without prejudice to any other application in the Town of Pelham.**
- 5. The Committee of Adjustment considered the written and oral comments and finds that this application does not meet the required Planning Act criteria, and is not consistent with the Town Official Plan.**

Application for relief of Section 13.2 (c) “Maximum Lot Coverage” to permit a lot frontage of 45 %, whereas 30 % is required, is hereby: REFUSED.

The above decision is based on the following reasons:

For specific reasons as stated at the hearing, it is the opinion of the Committee of Adjustment that:

- 1. The variance is not minor in nature.**
- 2. The general purpose and intent of the Zoning By-Law is not maintained.**
- 3. The proposal is not desirable for the appropriate development and/or use of the land.**
- 4. This application is refused without prejudice to any other application in the Town of Pelham.**
- 5. The Committee of Adjustment considered the written and oral comments and finds that this application does not meet the required Planning Act criteria, and is not consistent with the Town Official Plan.**

Application for relief of Section 13.2 (d) “Minimum Front Yard” to permit a front yard of 5m, whereas 7.7m is required, is hereby: REFUSED.

The above decision is based on the following reasons:

For specific reasons as stated at the hearing, it is the opinion of the Committee of Adjustment that:

- 1. The variance is not minor in nature.**
- 2. The general purpose and intent of the Zoning By-Law is not maintained.**
- 3. The proposal is not desirable for the appropriate development and/or use of the land.**
- 4. This application is refused without prejudice to any other application in the Town of Pelham.**
- 5. The Committee of Adjustment considered the written and oral comments and finds that this application does not meet the required Planning Act criteria, and is not consistent with the Town Official Plan.**

Application for relief of Section 13.2 (e) “Minimum Interior Side Yard” to permit an interior side yard of 1.2m, whereas 1.8m is required is, is hereby: REFUSED.

The above decision is based on the following reasons:

For specific reasons as stated at the hearing, it is the opinion of the Committee of Adjustment that:

- 1. The variance is not minor in nature.**
- 2. The general purpose and intent of the Zoning By-Law is not maintained.**
- 3. The proposal is not desirable for the appropriate development and/or use of the land.**
- 4. This application is refused without prejudice to any other application in the Town of Pelham.**

5. **The Committee of Adjustment considered the written and oral comments and finds that this application does not meet the required Planning Act criteria, and is not consistent with the Town Official Plan.**

Carried

6.2 A29/2019P - 20 Alan Crescent (Part 2)

Please see file B11/2019P minutes for more details.

Member Sheldon brought forward a motion that the minor variance applications A28/2019P and A29/2019P be reused based on the reasons the minor variance is not minor in nature, does not meet the intent of the existing zoning by-law and is not desirable for the development or use of the land.

Moved By Bill Sheldon

Seconded By Bernie Law

Application for relief of Section 13.2 (d) “Minimum Front Yard” to permit a front yard of 6.19m, whereas 7.7m is required, is hereby: REFUSED.

The above decision is based on the following reasons:

For specific reasons as stated at the hearing, it is the opinion of the Committee of Adjustment that:

1. **The variance is not minor in nature.**
2. **The general purpose and intent of the Zoning By-Law is not maintained.**
3. **The proposal is not desirable for the appropriate development and/or use of the land.**
4. **This application is refused without prejudice to any other application in the Town of Pelham.**
5. **The Committee of Adjustment considered the written and oral comments and finds that this application does not meet the required Planning Act criteria, and is not consistent with the Town Official Plan.**

Application for relief of Section 13.2 (e) “Minimum Interior Side Yard” to permit an interior side yard of 1.2m, whereas 1.8m is required, is hereby: REFUSED.

The above decision is based on the following reasons:

For specific reasons as stated at the hearing, it is the opinion of the Committee of Adjustment that:

- 1. The variance is not minor in nature.**
- 2. The general purpose and intent of the Zoning By-Law is not maintained.**
- 3. The proposal is not desirable for the appropriate development and/or use of the land.**
- 4. This application is refused without prejudice to any other application in the Town of Pelham.**
- 5. The Committee of Adjustment considered the written and oral comments and finds that this application does not meet the required Planning Act criteria, and is not consistent with the Town Official Plan.**

Application for relief of Section 13.2 (g) “Minimum Rear Yard” to permit a rear yard of 6.48m, whereas 7.5m is required, is hereby: REFUSED.

The above decision is based on the following reasons:

For specific reasons as stated at the hearing, it is the opinion of the Committee of Adjustment that:

- 1. The variance is not minor in nature.**
- 2. The general purpose and intent of the Zoning By-Law is not maintained.**
- 3. The proposal is not desirable for the appropriate development and/or use of the land.**
- 4. This application is refused without prejudice to any other application in the Town of Pelham.**

5. **The Committee of Adjustment considered the written and oral comments and finds that this application does not meet the required Planning Act criteria, and is not consistent with the Town Official Plan.**

Carried

7. **Minutes for Approval**

None.

8. **Adjournment**

Moved By Bill Sheldon

Seconded By Bernie Law

BE IT RESOLVED THAT this Meeting of the Committee of Adjustment Hearing be adjourned until the next regular meeting scheduled for March 3, 2020 at 4:00 pm.

Carried

Don Cook, Chair

Secretary-Treasurer, Nancy J. Bozzato