

Committee of Adjustment**Minutes**

Meeting #: CofA 9b/2020
Date: Tuesday, September 29, 2020
Time: 4:00 pm
Location: Town of Pelham Municipal Office - Council Chambers
20 Pelham Town Square, Fonthill

Members Present John Klassen
Sandra Marsh
Bernie Law

Members Absent Donald Cook

Staff Present Nancy Bozzato
Holly Willford
Sarah Leach
Barb Wiens
Jason Marr
Curtis Thompson

1. Attendance

Applicant, Agents and viewing members of the public via Town of Pelham YouTube Channel by Live-streaming.

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

Noting that a quorum was present, Chair Klassen 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

Ms. Holly Willford, Assistant Secretary-Treasurer stated no requests for withdrawal or adjournment have been made.

5. Applications for Minor Variance

5.1 A20/2020P - 1010 Canboro Road

Purpose of Application

Application for relief of Section 7.3 (e) "Minimum Side Yard" to permit a minimum side yard of 7.3m whereas the by-law requires 15m.

Representation

The Owner was electronically present.

Correspondence Received

1. Town of Pelham Planning Department
2. Town of Pelham Public Works
3. Town of Pelham Building Department
4. Niagara Region Planning & Development Services

Applicant's Comments

The Owner indicated he had no comments.

Public Comments

Ms. Holly Willford, Assistant Secretary Treasurer indicated no members of the public had pre-register to speak. Ms. Willford indicated she checked the clerks@pelham.ca email address at 4:15 pm and confirmed no e-mails has been received with regard to the subject application. Ms. Willford indicated the public comment portion of the application could be closed. The Committee agreed to close the public portion of the meeting and deliberate.

Members Comments

A Member stated he agreed with the application.

A Member asked if the unopened road allowance is owned by the Town and asked if the Owner considered purchasing the lands. In response, the Owner indicated his deed states unopened road allowance.

Moved By Sandra Marsh
Seconded By Bernie Law

Application for relief of Section 7.3 (e) “Minimum Side Yard” to permit a minimum side yard of 7.3m whereas the by-law requires 15m, is hereby: GRANTED

The above decisions are based on the following reasons:

- 1. The variance is minor in nature as no sensitive land uses are proximate and what appears to be an unopened road allowance continues to provide an additional 20 m of separation between the adjacent property 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 will allow for improved usage of the existing and recently approved greenhouse expansion.**
- 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.**
- 7. That the applicant is aware a new septic system permit is required.**
- 8. 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.**

Prior to the issuance of the Building Permit:

- 2. To the satisfaction of the Director of Community Development and Planning that:**

1. **Obtain building permit approval ensuring that a floating slab and anchor post layout foundation are used similar to that approved on the existing Site Plan Agreement.**

Carried

5.2 A21/2020P - 590 Canboro Road

Purpose of Application

Application for relief of Section 7.4 (e) "Minimum Exterior Side Yard" seeking 2.43 m, whereas 8 m is required, to recognize the existing legal non-complying dwelling and Section 7.4 (e) "Minimum Exterior Side Yard" seeking 3.85 m, whereas 8 m is required, to construct a $\pm 56.4 \text{ m}^2$, 2-storey residential addition to the north.

Representation

The Owner and Agent, Mr. Ian Whitehall was electronically present.

Correspondence Received

1. Town of Pelham Planning Department
2. Town of Pelham Public Works
3. Town of Pelham Building Department
4. Niagara Region Planning & Development Services
5. NPCA

Applicant's Comments

The Agent stated the owner is requesting the minor variance to facilitate an addition.

Public Comments

No members of the public had pre-register to speak.

Members Comments

A Member asked how large the subject lands are. In response, the Owner stated the lands are approximately 1.3 acres. The Member stated he is unsure why it is said the land is undersized.

Moved By Sandra Marsh

Seconded By Bernie Law

**Application for relief of Section 7.4 (e) “Minimum Exterior Side Yard” seeking 2.43 m, whereas 8 m is required, to recognize the existing legal non-complying dwelling and Section 7.4 (e) “Minimum Exterior Side Yard” seeking 3.85 m, whereas 8 m is required, to construct a ± 56.4 m², 2-storey residential addition to the north, is hereby:
GRANTED**

The above decisions are based on the following reasons:

- 1. The variance is minor in nature overall because it will help to improve the historic streetscape and the existing legal non-complying front yard setback has not posed any adverse impacts to date.**
- 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 will allow for improved living arrangements and usage of the existing legal non-complying dwelling.**
- 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.**
- 7. That the applicant is aware a new septic system permit is required.**
- 8. 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.

Prior to the issuance of the Building Permit:

2. To the satisfaction of the Director of Public Works that:
 1. Should a new driveway be needed, or the existing driveway widened, then a Driveway Entrance & Culvert Permit will be required, at the owner's expense.
3. To the satisfaction of the Director of Community Development and Planning that:
 1. Provide a west (Cream Street) Elevation Plan that positively contributes to the public street through the use of a more practical front porch, and ground floor windows symmetrically proportionate to the building's mass;
 2. Cease excavation activities immediately upon discovery of deeply buried archaeological resources. The Archaeology Programs Unit of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-212-8886) shall be notified and a licensed archaeologist is required to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists. In the event that human remains are encountered during construction, all activities must cease immediately and the local Police as well as the Cemeteries Regulation Unit of the Ministry of Government & Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MTCS should also be notified to ensure that the site is not subject to unlicensed alterations which would be in contravention of the Ontario Heritage Act.

6. Applications for Consent

6.1 B2/2019P - 204 Canboro Road

Purpose of Application

Application for consent to convey an easement in perpetuity over Part 2, to the benefit of Part 3 for the use of discharging storm water. Parts 1 and

2 are to be retained for continued use of residential property known municipally as 204 Canboro Road.

Representation

The Agents, Mr. Craig Rohe from Upper Canada Consultants and Mr. Tom Richardson, lawyer for the applicant were both electronically present.

Correspondence Received

1. Town of Pelham Planning Department (March 12, 2019 and August 11, 2020)
2. Town of Pelham Public Works (February 21, 2019)
3. Niagara Region Planning & Development Services (February 27, 2019)
4. Niagara Peninsula Conservation Authority (2019 Comments and Updated 2020 Comments)
5. Bell Canada
6. Hydro One
7. Ben Obdeyn, et al.
8. Ben Obdeyn (July 29, 2020 Comments)
9. Angela and Brian Young (August 5, 2020)

Applicant's Comments

Mr. Rohe stated the development of this property has been ongoing on for a long time and that this is the last step in required development approvals. He stated there has been a draft plan of condominium and zoning by-law amendment approved. Mr. Rohe indicated the site plan agreement is ready to be executed and the applicant has an NPCA permit for the proposed storm water outlet. Mr. Rohe briefly described location and purpose of the requested easement and provided a brief history of this application.

A Member stated professional engineers did the design work for the proposal and that ultimately, those professional engineers will be responsible for the design and should issues arise, the engineers will be required to rectify any issues. In response, Mr. Rohe stated that is correct and that many professionals have reviewed the proposal and provided

their stamps of approvals. He stated should issues arise the applicant and his team will resolve the issues to the satisfaction to the Town.

A Member asked if there are issues and the neighbours are concerned who should they call. In response, Mr. Rohe stated the NPCA is the regulatory authority and any neighbours could call the NPCA or the Town to request a site inspection. Mr. Rohe stated he and his applicant are confident in their design.

Mr. Richardson, the applicant's lawyer stated the easement at the bottom of the slope already exists and is the Town of Pelham's easement. He stated, therefore if issues arose the Town of Pelham would become aware of any complaint. Mr. Richardson stated the easement which is being requested tonight would be the responsibility of the condominium corporation.

A Member asked if there is an issue or maintenance need identified with the easement how long would it typically take the condominium corporation to make the repair. In response, Mr. Richardson stated they should be able to respond in good time. Furthermore, he stated typically a condominium corporation has a property management company and that company would deal with the complaint.

A Member stated it is important the neighbours can be assured there will not be any issues and if there are issues, there will be speedy resolution. The Agents made assurances there are engineering controls to ensure there will be no negative impacts. Mr. Jason Schooley, the applicants engineer discussed controls in place to ensure the engineering systems will work and stated they are designed for significant storm events.

Public Comments

Angela and Brian Young stated they live west of the proposed development. The Young's stated their concern is water and they do not want to have any additional water or silts coming onto their property.

Mr. Young stated he believes there are misunderstandings with respect to this development and stated there is currently no creek, rather he stated it is a dry valley. Mr. Young stated he is concerned about the existing easement and stated the easement ends at his property line. He indicated the easement was not designed to have additional water.

Mr. Young raised concerns with regards to the water flow rate numbers stated within Upper Canada Consultants in their report and the models

they used to create the flows. The Young's stated they believe the pre-flow rate is incorrect.

The Chair asked Mr. Jason Marr, Director of Public Works if he is in support of this application. In response, Mr. Marr, firstly stated the Town does have the responsibility of the existing easement. He stated he is not aware of any deficiencies with the easement and stated this would be the Town's responsibility. Mr. Marr stated with respect to the applicants design, he stated he has reviewed the documents and studies and stated he believes good engineering principles were used in the design. Mr. Marr stated he has read the comments received from the NPCA and the Niagara Region and he stated both are in favour of this application and the design. Mr. Marr stated he is in support of the engineering work which was submitted for this development.

Ben Obdeyn stated he is concerned with respect to excessive water and stated he would suggest the engineers consider using of french drains. Mr. Obdeyn asked if the storage tank will have a solid bottom or if it will be perforated. Mr. Obdeyn also asked if small equipment rather than big equipment can be used to minimize tree destruction. In response, Mr. Schooley stated the design was created to minimize ground water for slope stability. He stated all water is projected to landscaped areas. He stated he did not use a perforated pipe system for a variety of reasons.

Norah Peat stated her concerns are similar to the Young's. Ms. Peat stated she is concerned the UCC report states there is a tributary coil creek along the existing easement to the Town of Pelham. She stated that was never a tributary coil creek. She stated she believes this is significant as it is not a running waterway. In response, Mr. Rohe stated this term was provided by the applicant's ecologist.

Ms. Peat stated she understands the water flow rates, which the design is based, is derived from rainfall and stormwater figures from years that are no longer relevant and that the data is outdated. Ms. Peat referenced changing weather / climate patterns and therefore is concerned with the flow rates presented within the report.

In addition, Ms. Peat stated she is concerned with the amount of water that would go into the Town's easement. She stated she believes the Town may have some financial liability if property damage arises from excess water. She stated she believes the committee should commission their own reports to review the proposal.

In response to Ms. Peats concerns, Mr. Schooley stated he has used the St. Catharines rainfall data and further explained how the data was used for his modeling systems. He stated he is confident with the rainfall data used. Mr. Schooley stated the rainfall data is always up-dated.

Ms. Willford indicated she checked the clerks@pelham.ca email address at 6:06 pm and confirmed no e-mails has been received with regard to the subject application. Ms. Willford indicated the public comment portion of the application could be closed. The Committee agreed to close the public portion of the meeting and deliberate.

Members Comments

The Committee Members made no further comments.

Moved By Sandra Marsh

Seconded By Bernie Law

Application is made for consent to convey an easement in perpetuity over Part 2, to the benefit of Part 3 for the use of discharging storm water. Parts 1 and 2 are to be retained for continued use of residential property known municipally as 204 Canboro Road, is hereby GRANTED.

The above decision 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 \$395, payable to the Treasurer, Town of Pelham, be submitted to the Secretary-Treasurer. All costs associated with fulfilling conditions of consent shall be borne by the applicant.**

This decision is based on the following reasons:

- 3. 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.**
- 4. 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.**

5. **The Committee of Adjustment considered all written and oral submissions and finds that, subject to the conditions of provisional consent, this application meets Planning Act criteria, is consistent with the Provincial Policy Statement and complies with the Growth Plan, the Niagara Region Official Plan and the Town Official Plan.**

Carried

7. Minutes for Approval

None.

8. Adjournment

Moved By Sandra Marsh

Seconded By Bernie Law

THAT the Committee of Adjustment hearing be adjourned.

Carried

John Klassen, Chair

Secretary-Treasurer, Nancy J. Bozzato