

ISSUE DATE:

Jun. 25, 2008



PL080032

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: Bethlehem Not-For-Profit Housing Projects/Niagara
Subject: Consent
Property Address/Description: Kalar Road/North of Forestview Blvd
Municipality: City of Niagara Falls
OMB Case No.: PL080032
OMB File No.: PL080032
Municipal No. B46/2007/NF

APPEARANCES:

Parties

Bethlehem Not For Profit

City of Niagara Falls

Counsel

T. A. Richardson

K. L. Beaman

**MEMORANDUM OF AN ORAL DECISION DELIVERED ON JUNE 18, 2008
BY J. P. ATCHESON AND ORDER OF THE BOARD**

This was a hearing of the Ontario Municipal Board in the matter of an appeal by Bethlehem Not for Profit Housing (The Appellant) from a decision of the City Niagara Falls Committee of Adjustment (File B46/2007/NF), that refused to give a consent to a partial discharge of a mortgage and to a conveyance of a 5221.1 square metre parcel of land shown as Parts 1 and 2 on a Plan of Survey prepared by Andrew Cameron, Ontario Land Surveyor and dated August 27, 2007 being Part of Lot 159 Stamford Township now in the City of Niagara.

Counsel for the appellant at the commencement of the hearing requested that the application be amended to show a revised lot area of some 5357.1 square metres as shown on Plan of Survey prepared by Andrew Cameron, Ontario Land Surveyor and

dated January 30, 2008. Counsel also requested that the Board consider the amendment minor and pursuant to the Boards powers under Subsection 53(35) and (35.1) of the *Planning Act* deems the change minor not requiring further notice. Counsel for the City supported this request.

The Board is satisfied that the change is minor, that there would be no prejudice to any party and the amendment does not require further notice. Accordingly the Board will amend the application as requested without further notice.

Counsel for the municipality advised the Board that the City of Niagara Falls Municipal Council fully supports the appeal and has amended its zoning bylaw to authorize the proposal. The amending Bylaw is Bylaw No.2008-49 which came into force and effect on March31, 2008.

No one appeared in opposition to the proposed consent.

The Board heard from Mr. Richard Brady a qualified landuse planner retained by the appellant to assist then in its applications before the Committee of Adjustment and City Council. He reviewed for the Board the general location and surrounding landuses in the area of the subject property. He noted that the area is designated as Residential by the City of Niagara Falls Official Plan and that a medium density use at this location was in conformity with the policy and locational criteria as set out in Section 1.7.3 of the City's Official Plan. He also proffered that the proposed use was in conformity with the policy directions Garner Neighbourhood Secondary Plan a document used by the municipality among other things to refine the location and type of residential uses within the neighbourhood. He proffered the opinion that the intensification aspect of this medium density project was consistent with the policy direction of the 2005 Provincial Policy Statement for Settlement Areas. He also noted that the project was being designed to provide affordable housing for this part of Niagara Falls and as such was consistent with Section 1.4.3 of the 2005 Provincial Policy Statement. He confirmed that there were no conformity issues with the Region of Niagara's Official Plan as this part of Niagara Falls is designated as an Urban Area in that document. He sees no conflicts or conformity issues arising from the Provincial Growth Plan for the Greater Golden Horseshoe Area. It was his evidence that the Region of Niagara was still working on it population allocations for the constituent municipalities as required by the Provincial

Growth Plan. It was his opinion that the subject proposal would assist the City of Niagara Falls in meeting its intensification targets once they are established by the Region. He confirmed that the appellants and the Municipality had agreed to conditions to be imposed if the Board was to determine that the appeal should be allowed. These conditions are contained in Exhibit 5

Counsel for the Municipality called no witnesses and indicated the municipality endorses the evidence of Mr. Brady and would request that the conditions contained in exhibit 5 be imposed if the provisional consent and partial discharge of a mortgage were to be given by the Board.

FINDINGS AND CONCLUSIONS

The Board, after carefully reviewing the evidence, the Exhibits filed, and the submissions made by the parties, accept the uncontradicted planning evidence of Mr. Brady and the endorsement of his evidence by Counsel for the municipality:

THE BOARD ORDERS that the appeals are allowed and a provisional consent and a partial discharge of a mortgage of is to be given for lands shown as Parts 1 and 2 on a Plan of Survey prepared by Andrew Cameron, Ontario Land Surveyor and dated January 30, 2008 Plan subject to the conditions set out in Attachment 1 to this Order being fulfilled within one year from the date that the Board's decision issues.

This is the Order of the Board.

"J.P. Atcheson"

J.P.ATCHESON
MEMBER

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NOTICE OF DECISION

FILE NO: B46/2007/NF (REVISED)

Committee of Adjustment
City of Niagara Falls
4310 Queen Street
P.O. Box 1023
Niagara Falls, ON L2E 6X5

**In the matter of the Planning Act; Revised Statutes of Ontario, 1990, Chapter P.13 and;
In the matter of an application for consent on behalf of:**

RIVER REALTY DEVELOPMENT (1976) INC.

Type of Transaction for which application for consent is being made:

- Conveyance
- Mortgage or Charge
- Partial Discharge of Mortgage
- Other _____

Subject of the application:

The application is made for consent to partial discharge of mortgage and to convey 5520.3 square metres of vacant land, shown as Parts 1 & 2 on the attached plan and located on the west side of Kalar Road and north of Forestview Boulevard, being part of Stamford Township Lot 150, in the City of Niagara Falls.

DECISION: GRANTED

The above decision is subject to the following condition(s):

1. Dedication to the City of a 3 metre (9.84 foot) road widening - Part 2 (free and clear of any mortgages, liens or other encumbrances) across the Kalar Road frontage of Part 1.
2. The applicant submit a solicitor's legal undertaking agreeing to register the deed and consent form using Statement 101 under the Planning Act in the E-Registration system, and provide a copy of these documents forthwith after registration.
3. Submission to the Secretary-Treasurer, a paper copy of the electronic registration deed for conveyance of the subject parcel, together with a copy of the deposited reference plan, for use in the issuance of the Certificate of Consent.
4. Submission to the Secretary-Treasurer, the final certification fee payable to the Treasurer, City of Niagara Falls.

ONTARIO MUNICIPAL BOARD DECISION/ORDER #:

DATE:

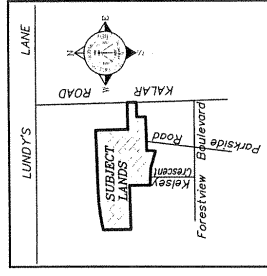
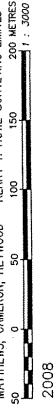
Note: This sketch is NOT a Plan of Survey.

SKETCH FOR LAND DIVISION PURPOSES ONLY

PART OF STAMFORD TOWNSHIP LOTS 139 AND 150

City of Niagara Falls

REGIONAL MUNICIPALITY OF NIAGARA
MATTHEWS, CAMERON, HEYWOOD - KERRY T. HOME SURVEYING LIMITED
5235 Stanley Avenue - Unit #1, Niagara Falls, Ontario L2E 7C2 Phone: (905) 358-3665 Fax: (905) 358-6224
88 Church Street, St. Catharines, Ontario L2R 3J8 Phone: (905) 687-3300
www.treasurysurveyors.ca



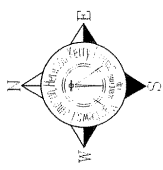
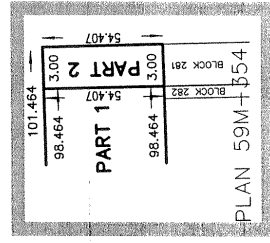
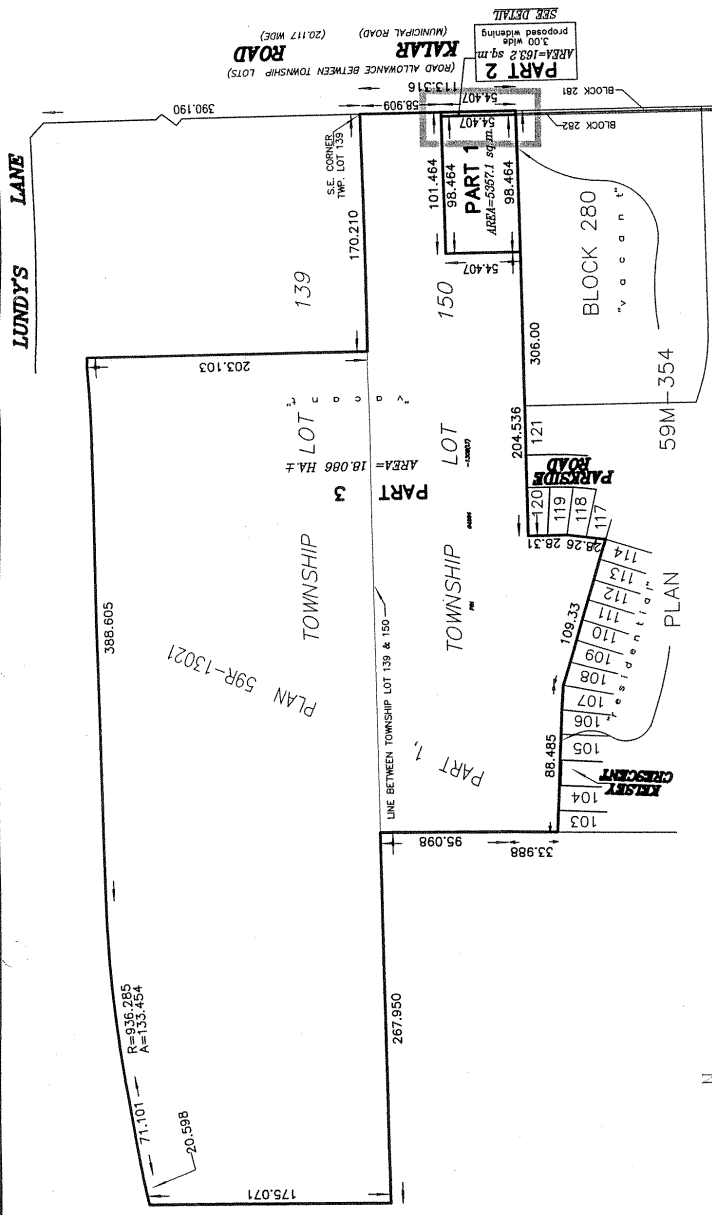
CITY OF NIAGARA FALLS
KEY PLAN not to scale

METRIC NOTE
DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE
CONVERTED TO FEET BY DIVIDING BY 0.3048

January 30, 2008
DATE
Andrew Cameron
ANDREW CAMERON
Ontario Land Surveyor

MATTHEWS, CAMERON, HEYWOOD - KERRY T. HOME SURVEYING LTD.
5235 Stanley Avenue - Unit #1, Niagara Falls, Ontario L2E 7C2 Phone: (905) 358-3665 Fax: (905) 358-6224
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Drawn S.S. Checked A.C. L.L.N. 38203 File attached



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