

ISSUE DATE:

Jan. 30, 2009



PL081107

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Frank & Jenny Chanady
Subject: Minor Variance
Variance from By-law No.: 79-200
Property Address/Description: 3893 Main Street
Municipality: City of Niagara Falls
OMB Case No.: PL081107
OMB File Nos.: PL081107, PL081108
Municipal Nos.: A-2008-011, A-2008-012

APPEARANCES:

Parties

Frank and Jenny Chanady

City of Niagara Falls

C. Aquilina

Counsel

T. Richardson

K.L. Beaman

DECISION DELIVERED BY J.V. ZUIDEMA AND ORDER OF THE BOARD

This decision does the following:

1. provides a written disposition on a motion to adjourn brought by Mr. Aquilina; and
2. determines the appeal brought by Frank and Jenny Chanady.

Motion to Adjourn:

At the outset of the hearing, Mr. Aquilina requested an adjournment on the basis that he had not been provided sufficient time to prepare for the hearing. A few residents appearing as participants indicated support for Mr. Aquilina's request; a number of other residents however indicated no preference and stated that they could proceed if required. The Chanadys opposed the adjournment, as did the City. The following is the Board's written disposition of its oral decision dismissing the motion to adjourn:

Adjournments are not granted by the Board lightly. Considerable time and public funds are used for hearings and hearings should not be adjourned unless exceptional circumstances exist. In this case, the Board is not satisfied that exceptional circumstances exist. Mr. Aquilina makes his adjournment request without the required notice pursuant to the Board's Rules. As such, his request is made pursuant to Rule 63 and Rule 64. (Rule 63 provides for a request for an adjournment raised at the beginning of a hearing event. Rule 64 provides for last minute adjournments for unavoidable emergencies). Mr. Aquilina provided no evidence that an emergency requires the Board to adjourn the hearing.

The matter has been adjourned once before in order to allow neighbours to attend and give evidence on their positions with respect to the Chanadys' appeal. They are here today and for the most part, are ready to proceed if required to do so.

Further the legislation places a positive obligation on those participating in legal proceedings to take reasonable steps to become prepared and be ready for whenever the matter comes to a hearing. This is called doing one's due diligence. The Board is not persuaded by Mr. Aquilina's submissions on why he did not sign the sheet at the Committee of Adjustment hearing which is required by ss. 45(10) (c) if he wanted a copy of the decision, nor does the Board accept his submission that he did not seek legal advice because he required more information. Unfortunately simply not being prepared and ready to proceed is not a sufficient enough reason to justify an adjournment. The motion for adjournment is denied. This is the Board's Order.

Chanady Appeal Background:

The Chanadys filed consent and minor variance applications to the City of Niagara Falls (the "City") Committee of Adjustment ("C of A") concerning their property located at 3893 Main Street in the City of Niagara Falls (the "subject property"). The Chanadys intend to create two new building lots fronting onto Bridgewater Street and required variances for the proposed building lots. The subject property is a through-lot with frontage on both Main Street and Bridgewater Street. The two new proposed lots will front onto Bridgewater Street. The consent applications were granted by the C of A subject to the Chanadys obtaining approval for the minor variances. The appeal before this Board is with respect to the minor variance application only as the Chanadys take issue with a condition imposed by the C of A.

The variances sought were as follows:

1. maximum driveway width:

4.8 m was required whereas 7.0 m was proposed

2. special building setback from the front lot line:
3.54 m was required whereas 3.35 m was proposed
3. minimum rear yard depth:
7.5 m was required whereas 5.6 m was proposed
4. minimum interior side yard:
1.8 m was required whereas 1.2 m was proposed
5. maximum lot coverage:
40% was required whereas 48% was proposed
6. minimum lot area:
370 sq. m was required whereas 296 sq. m. was proposed

The Committee of Adjustment granted all of the minor variances above but imposed a condition that a front yard depth of 6 m (19.7 ft.) be provided which was at odds with variance # 2. This requirement prompted the Chanadys' appeal.

The following neighbours attended, were given participant status and gave testimony in opposition to the Chanadys' appeal. They each took issue with the front yard setback and believed that the condition imposed by the Committee was appropriate:

- W. Thompson, currently a Municipal Councillor with the City of Niagara Falls
- F. and M. Murray, 3898 Bridgewater Street, Niagara Falls
- J. Puinno, 3902 Bridgewater Street, Niagara Falls
- N. McKinley, 3906 Bridgewater Street, Niagara Falls
- Levigne, 3908 Bridgewater Street, Niagara Falls

Mr. G. Mallouk testified in support of Mr. Aquilina but is not a resident in the area. He is a real estate agent who has assisted Mr. Aquilina in the past. Mr. K. Sullivan of 3868 Bridgewater Street, Niagara Falls, also a participant and neighbour, attended at the outset but did not testify.

Prior to the commencement of the hearing, the Appellants and the City resolved their dispute and executed Minutes of Settlement, which was filed with the Board as Exhibit 6. The settlement provided that the Chanadys would withdraw the relief sought

to reduce the special building setback from the front lot line (variance # 2) and would provide a 6 m setback to the garage. However, the settlement permitted the Chanadys the right to build to the average setback line afforded by section 5.7 of By-law 79-200 for the habitable portion of the dwellings. The Board considers this amendment as technical and minor and therefore, will consider it without further notice pursuant to subsection 45(18.1) and (18.1.1) of the *Planning Act*.

Mr. Ken Mech, an in-house municipal Planner with the City, was qualified to provide expert opinion evidence. He testified that the settlement achieved by the City represented good planning and was in the public interest. He opined that the variances in the Minutes of Settlement met the four legislative tests. He had reviewed the 2005 Provincial Policy Statement and Provincial Growth Plan to conclude that there were no issues regarding consistency with those policies. In arriving at his opinion, he reviewed both the Official Plan of the Region of Niagara as well as the City of Niagara Falls.

In addressing why the Committee had imposed the one condition at issue, he candidly stated that the Planning Staff report, which recommended the condition, was in error and the author of that report was fully aware and endorsed the position before this Board being taken by Mr. Mech.

Mr. Mech stated in his affidavit filed in support of the settlement, at page 4, par. (d):

I am unable to conclude that a 6 metre (19.7 ft.) setback for the entire dwelling (including the garage) as imposed by the Committee of Adjustment is necessary or desirable for the appropriate development or use of the land, building or structure. I believe the Committee's intent of requiring the condition was to ensure there would be sufficient space between the attached garages and the front lot line to park vehicles. Provided a 6 metre setback is provided between a garage and the front lot line, I have concluded that it is unnecessary to force the habitable portion of the dwelling to be setback 6 metres as well. If the Committee's condition of a 6 metre setback is imposed on the entire dwelling, the very thing the by-law is attempting to avoid – a disunified, dissonant streetscape – will be achieved due to the difference between the setback of the new dwelling and the existing dwellings to the east which provides only a 1.04 metre setback. The setbacks proposed and which have been accepted by the Chanadys would allow a reasonable position to be reached and assist in achieving the desired streetscape, while providing for needed space to park vehicles in front of the dwellings.

Mr. Frank Murray testified on behalf of himself and his wife. They live at the semi-detached dwelling west of subject property. Their primary concern was that the proposed construction would result in detrimentally affecting their waterfront view. Ms. Puiino shared the same concern and she felt she would lose her view of the waterfront. She also lives in the semi-detached dwelling west of the subject property.

Board's Findings and Decision:

The Board prefers the planning evidence provided by the City and relies on Mr. Mech's expert opinions as a basis for its decision. Mr. Mech's evidence which was not challenged by any other expert, has satisfied the Board that the settlement recommended by him meets the four tests required by the *Planning Act*, and that the minor variances as reflected in the settlement represent good planning and are in the public interest. The Board accepts Mr. Mech's opinion that under these circumstances, imposing a 6 m front yard setback would have the effect of negating the intent and purpose of section 5.7 of the City's Zoning By-law.

Therefore the Board allows the appeal to effect the amended variances as reflected in the Minutes of Settlement.

THE BOARD having been asked to consider an application, which has been amended from the original application, and the Board having determined as provided for in subsection 45(18.1.1) of the *Planning Act* that no further notice is required.

THE BOARD ORDERS that the appeal is allowed and the amended variances to By-law 79-200 of the City of Niagara Falls are authorized subject to the conditions set out in Exhibit 6, which is attached as Attachment "1" to this Order.

This is the Board's Order.

"J. V. Zuidema"

J.V. ZUIDEMA
VICE CHAIR

MINUTES OF SETTLEMENT

IN THE MATTER of appeals by Frank Chanady regarding the conditions applied by the City of Niagara Falls' Committee of Adjustment to two applications (Files A-2008-011 & A-2008-012) for minor variances for two parcels of land to be created through two concurrent consent applications (Files B-2008-003 & B-2008-004).

THIS AGREEMENT made this 14th day of October, 2008.

BETWEEN:

THE CORPORATION OF THE CITY OF NIAGARA FALLS

Hereinafter referred to as the "City"

OF THE FIRST PART;

-and-

FRANK AND JENNY CHANADY

Hereinafter referred to as the "Appellant"

OF THE SECOND PART.

WHEREAS the Appellant has filed concurrent consent applications (Files B-2008-003 & B-2008-004) to create two new building lots fronting onto the south side of Bridgewater Street, between Thibert Street and Dock Street in the former Village of Chippawa, now in the City of Niagara Falls:

AND WHEREAS the Appellant has filed concurrent minor variance applications (Files A-2008-011 & A-2008-012) for relief from a number of regulatory provisions of Zoning By-law No. 79-200 to facilitate the creation of the lots and the construction of one family detached dwellings on the two new lots:

AND WHEREAS the City's Committee of Adjustment has considered and approved the concurrent consent applications and considered and approved the minor variance applications conditional upon the future dwellings providing front yard depths of 6 metres (19.7 ft.)

AND WHEREAS the Appellant has appealed the conditions imposed by the City's Committee of Adjustment with respect to its approval of the subject minor variance applications (A-2008-011 & A-2008-012) that require front yard setbacks of 6 metres (19.7 ft.) being provided on each new lot;

AND WHEREAS the parties are desirous of resolving the said appeals and have agreed to the following:

THAT both parties agree that a request will be made to the Ontario Municipal Board to allow the appeals in part without the requirement of a full hearing and request the issuance of an Order of the Board granting the variances as approved the Committee of Adjustment of the City of Niagara Falls with the following modifications:

- (a) That minor variance applications A-2008-011 & A-2008-012 be revised by the Appellant to withdraw the relief sought from section 5.7 of By-law No. 79-200 to reduce the Special Building Setback measured from the front lot line to the front of the dwelling from 3.54 metres (11.6 ft.) down to 3.35 metres (11.0 ft.); and
- (b) That notwithstanding section 5.7 of By-law No.79-200 (Special Building Setback) minor variance applications A-2008-011 & A-2008-012 be approved conditional on a front yard depth of 6 metres (19.7 ft.) being provided in front of the private garages to be attached to the dwellings on each new lot and a front yard depth of 3.54 metres (11.6 ft.) in front of the habitable portion of each dwelling unit.

To achieve the result that the building envelope of each of the lots to be created by Committee of Adjustment consent applications B-2008-003 and B-2008-004 will be governed by the regulations set forth in Schedule "A" to these Minutes of Settlement.

IN WITNESS THEREOF the Parties hereto have hereunto affixed their respective corporate seals attested by the hands of their dully authorized officers in that behalf on the day, month and year first above written.

THE CORPORATION OF THE CITY OF NIAGARA FALLS

Per: K.J. Beaman
Ken Beaman, City Solicitor

FRANK CHANADY

Per: Frank Chanady
Frank Chanady, Appellant

JENNY CHANADY

Per: Jenny Chanady
Jenny Chanady, Appellant

ONTARIO MUNICIPAL BOARD

Frank Chanady has appealed to the Ontario Municipal Board under subsection 45(12) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, from the decision of the Committee of Adjustment of the City of Niagara Falls to apply conditions to approved minor variance applications that require front yard setbacks of 6 metres.

City File No. A-2008-11 and A-2008-012

ORDER

THIS MOTION, made by The Corporation of the City of Niagara Falls, for an Order of the Board, was heard this day _____ (date) at _____ (time) at 655 Bay Street, Suite 1500, Toronto, Ontario.

ON READING the Affidavit of Ken Mech sworn October 15, 2008 and on hearing the submissions of the parties appearing by conference call.

THIS BOARD ORDERS that minor variance applications A-2008-011 and A-2008-012 be revised by the Appellant to withdraw the relief sought to reduce the Special Building Setback provisions of By-law No. 79-200 measured from the front lot line to the front of the dwelling from 3.54 metres (11.6 ft.) down to 3.35 metres (11.0 ft.);

THIS BOARD FURTHER ORDERS that notwithstanding the Special Building Setback provisions of By-law No. 79-200, minor variance applications A-2008-011 and A-2008-012 be approved conditional on a front yard depth of 6 metres (19.7 ft.) being provided in front of the private garages to be attached to the dwellings on each new lot and a front yard depth of 3.54 metres (11.6 ft.) in front of the habitable portion of each dwelling unit.
