

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 26, 2015

CASE NO(S): PL150118

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Joan Woodbridge
Applicant:	John Louis C Letourneau
Subject:	Minor Variance
Variance from By-law No.:	79-200
Property Address/Description:	8869 Thorold Stone Rd
Municipality:	City of Niagara Falls
Municipal File No.:	A-2015-001
OMB Case No.:	PL150118
OMB File No.:	PL150118
OMB Case Name:	Woodbridge v. Niagara Falls (City)

Heard: June 15, 2015 in Niagara Falls, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Joan Woodbridge (Appellant)

Robert Judge

John Louis Letourneau (Applicant)

Self-represented

City of Niagara Falls

Ken Beaman*

MEMORANDUM OF ORAL DECISION DELIVERED BY W. R. WINNICKI ON JUNE 15, 2015 AND ORDER OF THE BOARD

[1] The subject property is located at 8869 Thorold Stone Road and is outside the designated urban area of the City of Niagara Falls.

[2] At the onset of the hearing, the City Solicitor Ken Beaman confirmed the information that he recently provided via email to the Board and to the Parties that City officials mistakenly advised the Applicant that the height of his recently constructed accessory structure was in contravention of the applicable zoning provisions specifically in respect of the maximum allowable height of building. It was on this basis that the Applicant applied to the Committee of Adjustment (“Committee”) and received from the Committee an approval of a minor variance permitting the subject building to have a height of 5.8 metres (“m”), greater by 1.8 m than permitted by the specific by-law that was referenced.

[3] It is this minor variance approval that has been appealed by the Appellant Joan Woodbridge who is a neighbour of the Appellant.

[4] In support of this unfortunate circumstance, Ken Mech the City’s Manager of Current Planning, Building & Development was sworn in as an expert planning witness. Mr. Mech informed the Board that it was only recently as he was preparing for this schedule Board hearing, he determined that the specific zoning provisions as applicable to the subject property which is in a designated agricultural district, do not have any height restriction for such an accessory structure as the Applicant has constructed. Accordingly, it is his assessment that this matter was erroneously presented for the consideration of the Committee. To demonstrate to the Board how he arrived at this conclusion, Mr. Mech provided the Board with a series of materials filed as Exhibits 4, 5, 6, 8, 9, 10 and 11 which are excerpts from the applicable City zoning by-laws particularly relevant to this subject property and this subject matter.

[5] Mr. Mech concluded his evidence with his findings that this subject matter should not have been referred to the Committee for consideration as an application for a minor variance.

[6] Mr. Beaman then addressed the Board and expressed regret on behalf of the City for this error and asked the Board to dismiss this matter. Mr. Beaman informed the Board that the City will be refunding to the Parties any fees that they have paid to the City in respect of this matter.

ORDER

[7] The Board finds on the basis of the evidence presented by Mr. Mech that the height of the subject accessory structure constructed by the Applicant is not in contravention of the City's applicable zoning by-laws. It is disappointing that in the first instance City officials made such an error and, furthermore, that it took a number of months to discover this error. Such circumstance has caused unnecessary stress and expense to the Parties and, as well, has unnecessarily taken up the Board's time and resources.

[8] The Board does not approve the subject minor variance application and dismisses the related appeal as being not applicable in this circumstance.

"W. R. Winnicki"

W.R. WINNICKI
Member

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248