

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



**ISSUE DATE:** February 27, 2018

**CASE NO(S):** PL160456

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

Appellant:	John and Kathy Anstruther
Applicant:	Ivan Dagenais
Subject:	Minor Variance
Variance from By-law No.:	79-200
Property Address/Description:	8121 Alpine Drive
Municipality:	City of Niagara Falls
Municipal File No.:	A-2016-018
OMB Case No.:	PL160456
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OMB Case Name:	Anstruther v. Niagara Falls (City)

**Heard:** February 9, 2018 by telephone conference call

**APPEARANCES:**

**Parties**

**Counsel**

John and Kathy Anstruther

Self-represented

Ivan Dagenais

Self-represented

City of Niagara Falls

Ken Beaman

**MEMORANDUM OF ORAL DECISION DELIVERED BY RICHARD JONES ON  
FEBRUARY 9, 2018 AND ORDER OF THE BOARD**

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[1] The Applicant, Ivan Dagenais, requested the Board to review and amend its Decision pertinent to an earlier Decision issued on September 14, 2016 which ordered

that the appeal by John and Kathy Anstruther, pursuant to s. 45(12) of the *Planning Act* be dismissed regarding the City of Niagara Falls (“City”) Committee of Adjustment (“COA”) approval for a 1.2 metre rear yard affecting the Applicant’s home at 8121 Alpine Drive (“subject property”). The intent of the variance was to permit an expanded garage, which the Board finally authorized with conditions.

[2] A telephone conference call (“TCC”) was convened on February 9, 2018 to hear evidence in association with this Decision with particular reference to one of the approval conditions. This Member heard the original appeal and agreed to rehear the matter in reference to s. 118 of the Ontario Municipal Board’s *Rules of Practice and Procedure*.

[3] The COA imposed three conditions pertinent to garage building height, the front yard setback and the height of the garage door in its Notice of Decision, and the Board after hearing evidence from the Applicant’s architectural designer, imposed a fourth condition requiring that the exterior of the garage be “clad in brick to match the existing brick of the residence and garage” which the designer had testified would be part of the building program.

[4] Pursuant to the Board’s Decision, the garage was expanded in compliance with three conditions with the exception that the sidewall and rear walls of the expanded garage use were clad in red stained wood rather than brick, incurring as a consequence, a building violation. According to evidence provided during the TCC, the Applicant could not source sufficient matching brick for the side and rear walls having just salvaged enough of the existing brick to clad only the front wall in opposition to the Board’s order as well as the building permit issued from the City. Nevertheless the structure was finished in mid December 2016 in an effort to protect the exterior in preparation for the winter season.

[5] The amendment to substitute brick for wood was opposed by the Appellant, John Anstruther who stated that the integrity of the first decision would be eroded by such an

action which arose, as noted, from the Applicant's own designer rather than himself or the others in the neighbourhood.

[6] The Applicant posited that the provision of full brick cladding which did not match the original brick would be a very unattractive option for what is, in their view, a very appealing home in a neighbourhood where over 90 percent of the existing homes combine wood with brick cladding, including the Appellant's own residence situated nearly opposite the subject property.

[7] The City's Solicitor Ken Beaman, did not indicate opposition to an amendment of the Board's decision.

## **FINDINGS**

[8] The Board found that an amendment deleting the cladding-related condition from the original Decision was appropriate.

[9] Although the Board notes that this Decision should not be mistaken as tacit acknowledgement of correct behavior on the Applicant's part—which was not appropriate due his contravention of the Board's order and the City's building permit—the reasons underlying the substitution were nevertheless, from an aesthetic and practical perspective, reasonable. The Board agrees that a non-matching brick veneer would be unattractive visually and more likely to offend the aesthetics of the neighbourhood and certainly the home itself than the wood cladding option which is a commonly found throughout the community. The photographic exhibits also illustrated that the Applicant had fulfilled the remaining conditions of approval in a satisfactory manner and the photos also revealed an attractive wood and brick built-combination consistent with the Applicant's architectural submission at the first hearing in 2016. The apparent unavailability of a matching brick material in the marketplace represented an obstacle, which at the end of the day, could not be reasonably overcome.

**ORDER**

[10] The Board orders, pursuant to s. 118 of the Ontario Municipal Board's *Rules of Practice and Procedure*, that the approval condition requiring that the expanded garage be clad in matching exterior brick as required by the Ontario Municipal Board Decision issued September 14, 2016, Case Number PL160456, be deleted in its entirety.

*"Richard Jones"*

RICHARD JONES  
MEMBER

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**Ontario Municipal Board**

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