

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



**ISSUE DATE:** September 14, 2016

**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 Dr
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:** August 22, 2016 in Niagara Falls, Ontario

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

John and Kathy Anstruther  
("Appellant")

Self-represented

Ivan Dagenais ("Applicant")

Lou Melone

City of Niagara Falls (the "City")

Ken Beaman\*

**DECISION DELIVERED BY RICHARD JONES AND ORDER OF THE BOARD**

[1] Ivan Dagenais applied to the Committee of Adjustment of the City of Niagara Falls ("COA") to enlarge his existing garage at his residence located at 8121 Alpine Drive (subject property). The application concerned a variance to By-law No. 79-200

("ZBL"), which requires a minimum rear yard depth of 7.5 metres ("m"); whereas an easterly rear yard depth of 1.2 m is proposed. The garage addition, consisting of 69 square metres, would in effect double the garage space available to the homeowner, providing additional area intended for the storage and upkeep of valuable automobiles, but not the repair of same according to the owner.

[2] The subject lands are located on the northeast corner of Angela Crescent and Alpine Drive. Although the home and its existing attached garage face Alpine Drive, the ZBL considers the front lot line to be along Angela Crescent, which is the smaller of the two street flankages. Consequently, the garage addition falls technically within the rear yard, (which lies opposite the front yard) although from the perspective of appearance and function rather than zoning definition, that yard serves as the easterly side yard which divides the subject property from its nearest neighbour, 8103 Alpine Drive.

[3] The COA's approval of the variance was appealed by John and Kathy Anstruther, who reside opposite the subject lands at 8114 Alpine Drive. The owner of 8103 Alpine Drive did not oppose the application.

[4] The COA's decision had the support by the City's Planning Department and that department's director, Alex Herlovitch testified at the hearing in support of the application. The planning director provided the only professional planning evidence.

[5] The COA imposed four conditions, three of which required that:

- One, the setback of the garage addition (5.6 m) match that of the drawing presented to the COA;
- Two, the height of the garage addition is to match the elevation of the existing garage structure and;
- Three, the height of the garage door must maintain the height of the existing garage door.

[6] These conditions, the Board heard in testimony, were intended to ensure that larger, commercial vehicles were denied accommodation in the new garage addition as well as to provide for a measure of architectural integration with the existing garage. The Applicant's architectural draftsman testified that the exterior walls of the garage would be bricked in a manner identical to the existing residence, but the COA's conditions of approval did not reflect that particular improvement

[7] The Applicant's business vehicles have parked from time to time on the subject property although that business is headquartered elsewhere within the City according to evidence.

[8] The planning director provided testimony pursuant to s. 45(1) of the *Planning Act* ("Act"), which lays out the four tests of a variance application.

[9] The planner opined that the general intent and purpose of the Official Plan ("OP") was maintained because attached garage uses, which are permitted in the OP, are commonly found in the surrounding neighbourhood.

[10] He testified that the general intent and purpose of the zoning by-law is maintained because as a corner lot, the rear yard in effect serves as a functional side yard, and side yard setbacks are typically 1.2 m in the City; a setback distance subscribing to the dimension of the variance. Moreover, the functional rear yard, being in effect the northerly side yard according to the ZBL, still provides sufficient amenity space and the expanded built form will not contravene other standards of the ZBL in relationship to lot coverage and hard surfacing in association with the wider driveway.

[11] The application is desirable for the appropriate development or use of the land in the planner's view because the proposed garage addition will be set back 5.6 m from Alpine Drive, a distance comparable with other front yard setbacks along that roadway.

[12] The planning director was of the opinion that the variance was minor because the abutting neighbour was not adversely affected and there was no negative impact on outdoor amenity space.

[13] Mr. Anstruther, who lives across the road, believed the garage would be too large and incompatible with the neighbourhood as a consequence. He was concerned that the larger garage would eventually house the Applicant's commercial vehicles in addition to the collectibles.

[14] His comments were echoed by several other neighbours who testified as participants.

[15] Brian Butler of 8104 Alpine Drive and Nadine Gibson of 8091 Alpine Drive both testified that it was their belief that the garage would further consolidate an apparent habit of the Applicant to park his commercial vehicles in the driveway, and park an RV and a trailer in the rear yard, off the driveway.

## **FINDINGS**

[16] The Board finds that variance associated with the expanded garage does not contradict existing planning policy or impose adverse impact on adjacent properties. In this regard the tests pertinent to s. 45(1) are met and the appeal is dismissed.

[17] However, this decision is not issued unconditionally. In concert with the COA, the Board also shares the neighbourhood's concern that the garage addition must remain strictly residential in relationship to height, door-opening size, appearance and most importantly, function.

[18] In this regard the relevant COA conditions are repeated in the Order and an additional condition is added to ensure that the exterior of the expanded garage is bricked in the same manner as the existing structure.

**ORDER**

[19] The Board orders that the appeal is dismissed and the variance is authorized with regard to the 1.2 m rear yard variance for the property known municipally as 8121 Alpine Drive in the City of Niagara Falls and the following conditions shall apply.

[20] The minimum setback from Alpine Drive of the garage addition shall be 5.6 m.

[21] The height of the proposed garage addition shall be no more than the height of the existing garage.

[22] The height of the proposed garage door shall maintain the height of the existing garage door.

[23] The garage addition shall be no more than 69 square metres in area and the exterior shall be clad in brick to match the existing brick of the residence and garage.

[24] Board Rule 107 states:

**107. Effective Date of Board Decision** A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

[25] Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

*“Richard Jones”*

RICHARD JONES  
MEMBER

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**Ontario Municipal Board**

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