

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: June 15, 2018

CASE NO(S): PL180011

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	Pinewood Homes (Niagara) Ltd.
Applicant:	Kalar Ltd.
Subject:	Minor Variance
Variance from By-law No.:	2013-169
Property Address/Description:	8056 McLeod Road
Municipality:	City of Niagara Falls
Municipal File No.:	A-2017-040
OMB Case No.:	PL180011
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OMB Case Name:	Pinewood Homes (Niagara) Ltd. v. Niagara Falls (City)

Heard: May 7, 2018 in Niagara Falls, Ontario

APPEARANCES:

Parties

Pinewood Homes (Niagara) Ltd.

Kalar Ltd.

City of Niagara Falls

Counsel

Rocco Vacca

Callum Shedden and Robert Di Lallo

Ken Beaman

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
MAY 7, 2018 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] On October 3, 2017, Kalar Ltd. (“Applicant”) applied to the City of Niagara Falls (“City”) Committee of Adjustment (“Committee of Adjustment”) for minor variances to the City’s Zoning By-law No. 2013-169 (“Zoning By-law”) to facilitate the construction of an apartment dwelling with a two-level above ground parking structure at 8056 McLeod Road (“subject property”).

[2] The Applicant seeks the following variances to the Zoning By-law:

- to permit a minimum interior side yard setback of 1.1 metres (“m”) for the proposed parking structure, whereas the Zoning By-law requires 6 m; and
- to permit a maximum lot coverage of 35.6%, whereas the Zoning By-law requires 30%.

[3] On December 5, 2017, the Committee of Adjustment approved the application and granted the proposed variances subject to conditions. The conditions were:

- the openings in the parking garage must have glazed spandrels (non-see through glass);
- the 2 m tall extended parapet above the finished parking floor level on the second level must be solid and cladded with an esthetic façade with no gaps so there is 100% light and vehicle coverage (full blockage is required);
- a maintenance plan for five years on any landscape and other maintenance along the property line with Pinewood Homes (Niagara)

Ltd. (the “Appellant”) must be put in place;

- there must be a car park height restriction based on the top of the parking structure wall (not including the parapet) of 3.15 m above ground level;
- the Appellant must be consulted and allowed to participate in the site plan approval process; and
- the Applicant must provide a “living wall” of greenery on the eastern wall of the parking structure.

[4] On December 15, 2017, the Appellant, who owns property adjacent to the subject property, appealed the Committee of Adjustment’s decision.

[5] At the commencement of the hearing on May 7, 2018, the Parties informed the Tribunal that they had reached a settlement. The Tribunal heard land-use planning and environmental evidence in support of the proposed settlement and approved the proposed variances in principle. There are no participants in this proceeding.

EVIDENCE, SUBMISSIONS AND FINDINGS

[6] The issue in this appeal is whether or not the proposed variances meet the four tests under s. 45(1) of the *Planning Act* (“Act”). More specifically, do the proposed variances maintain the general purpose and intent of the City’s Official Plan (“Official Plan”), do they maintain the general purpose and intent of the Zoning By-law, are they desirable for the appropriate use of the subject property, and are they minor?

[7] Alex Herlovitch was qualified and provided land use planning opinion evidence on behalf of the City. He explained that the Appellant’s main concern is with the proposed setback between the Appellant’s property and the Applicant’s proposed parking structure. The Appellant wishes to have that setback increased by 2 m. Mr. Herlovitch stated that such a change would entail moving the proposed parking

structure by 2 m to the west on the subject property.

[8] Mr. Herlovitch explained that the subject property includes a provincially significant wetland primarily situated in the southwestern area of the property and continuing offsite. The subject property and lands to the west and south of the subject property also contain a provincially significant woodland. He said the Niagara Peninsula Conservation Authority (“NPCA”) reviewed the proposal in October 2017 (Exhibit 4, Tab 5) and did not object to the Applicant’s proposed 15 m setback from the provincially significant wetland and woodland as initially proposed in its application and NPCA did not object to the approval of the proposed variances.

[9] Mr. Herlovitch stated that back in October 2013 the Applicant had an environmental impact statement (“EIS”) prepared by Colville Consulting Inc. regarding the impacts of the proposed development on the wetland and the woodland. Based on the proposed change to the parking structure’s location to address the Appellant’s setback concerns, the Applicant had the EIS updated in April 2018. The updated EIS (Exhibit 5, Tab 6) found that a 13 m setback would be a sufficient distance to provide protection to the wetland feature and it proposed mitigation measures related to the woodland.

[10] Mr. Herlovitch testified that based on the updated EIA, the NPCA has approved the proposed 13 m buffer on the following conditions:

- an updated site servicing and grading plan is submitted to the NPCA for review and approval. The updated plan needs to show how the building movement affects the stormwater management components in the buffer area. Depending on the scope, nature and location of any changes to the site servicing/grading, the NPCA may require an addendum to the EIS to address the grading/servicing aspects of the development. The NPCA is under no obligation to approve the said information if it is considered unsatisfactory;
- no site alteration or grading will be permitted to occur within 7.5 m of

the wetland;

- the Applicant ensure compliance with the *Endangered Species Act*.

[11] Mr. Herlovitch reviewed the Minutes of Settlement, dated May 7, 2018 (Exhibit 3) and testified that they include these conditions. He opined that the proposed variances with conditions based on the terms in the Minutes of Settlement satisfy the four tests in s. 45(1) of the Act. He testified that the proposed residential development is permitted under the Official Plan. He said the proposed variances facilitate a development that meets the performance regulations in the Zoning By-law, is compatible with existing uses in the area, is desirable for the appropriate use of the subject property, will have no adverse impacts on adjacent landowners, and are minor. He also stated that the proposed variances are consistent with the Provincial Policy Statement, 2014 (“PPS”) in that they facilitate intensification of urban lands, facilitate the utilization of existing municipal infrastructure and facilitate the achievement of the City’s intensification goals.

[12] The Tribunal also heard opinion evidence from Ian Barrett. He was qualified by the Tribunal to give opinion evidence as “a biologist with respect to environmental and natural heritage issues” on behalf of the Applicant. He testified that the proposed 13 m buffer is adequate and is supported by the updated EIS, and that the proposed development would not impact the provincially significant wetlands.

[13] Having considered the uncontradicted opinion evidence of Mr. Herlovitch and Mr. Barrett and the settlement reached between the Parties, the Tribunal finds that the proposed variances with the conditions proposed in the Minutes of Settlement are consistent with the PPS and meet the four tests in s. 45(1) of the Act.

ORDER

[14] The Tribunal orders that the appeal is allowed in part.

[15] The Tribunal orders that:

1. The following variances to the Zoning By-law are authorized for the subject property:
 1. Minimum interior side yard width from the east side lot line from 6 m, as required by the Zoning By-law, to 3.1 m;
 2. Maximum lot coverage from 30%, as required by the Zoning By-law, to 35.6%;
 3. Minimum interior side yard width from west side lot line from 14.4 m, as required by the Zoning By-law, to 13.6 m; and
 4. The apartment dwelling and the garage structure in the R5E-992 zone may encroach a distance of not more than 2 m into the EPA-993 zone whereas the Zoning By-law permits only portions of the apartment dwelling above the first storey to do so;
2. The above variances are granted subject to the conditions that:
 - a. an updated site servicing and grading plan is submitted to the NPCA for review and approval. The updated plan needs to show how the building movement affects the stormwater management components in the buffer area. Depending on the scope, nature and location of any changes to the site servicing/grading, the NPCA may require an addendum to the EIS to address the grading/servicing aspects of the development. The NPCA is under no obligation to approve the said information if it is considered unsatisfactory;
 - b. no site alteration or grading will be permitted to occur within 7.5 m of the wetland;

- c. the Applicant ensure compliance with the *Endangered Species Act*, given that the field work associated with the EIS and updated EIS is from 2011;
 - d. the Applicant shall ensure that:
 - i. the openings in the parking garage shall be glazed spandrels (non-see through glass) to mitigate sound, exhaust fumes, and visibility of garage lighting and vehicles from the garage;
 - ii. the 2 m tall extended parapet above the finished parking floor level on the second level must be solid and clad with an esthetic façade. There must be no gaps so there is 100% light and vehicle coverage;
 - iii. it institutes a maintenance plan for five years on any landscape and other maintenance along the east property line;
 - iv. the height of the first floor of the parking garage, not including the parapet, shall be no more than 3.15 m above ground; and
 - v. the Appellant is consulted and allowed to participate in the site plan approval process;
 - e. the Applicant plant evergreen trees with a height of no less than 4 m tightly along the east side property line with no gaps in accordance with the landscape plan attached to the Minutes of Settlement as Attachment 4;
3. The apartment dwelling shall not exceed 10 storeys in height notwithstanding that the Zoning By-law permits a 12 storey apartment dwelling;

4. Only a two-level parking structure shall be built with a 3.1 m side yard width from the east side lot line.

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

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Local Planning Appeal Tribunal

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Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248