

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



ISSUE DATE: July 11, 2019

CASE NO(S): PL180830

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:	Satnam Bhamra
Applicant:	Fernando Caiella
Subject:	Minor Variance
Variance from By-law No.:	2012-119
Property Address/Description:	7549 Kalar Road
Municipality:	City of Niagara Falls
Municipal File No.:	A-2018-027
LPAT Case No.:	PL180830
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LPAT Case Name:	Bhamra v. Niagara Falls (City)

Heard: March 20, 2019 in Niagara Falls, Ontario

APPEARANCES:

Parties

Counsel

Satnam Bhamra (“Appellant”)	No one appearing
2607305 Ontario Inc. (“Applicant”)	Jennifer Meader
City of Niagara Falls (“City”)	Tom Halinski

**MEMORANDUM OF ORAL DECISION DELIVERED BY PAULA BOUTIS ON
MARCH 20, 2019 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] Satnam Bhamra appealed a decision of the Committee of Adjustment (“Committee”) authorizing minor variances to facilitate the construction of two apartment buildings (condominium development) at 7549 Kalar Road (“Subject Property”).

[2] While Fernando Caiella is noted as the Applicant in the Tribunal file, 2607305 Ontario Inc. is the Applicant and is so reflected in the appearances.

[3] The Appellant did not appear. The Tribunal stood the matter down for 30 minutes, as required by the *Rules of Practice and Procedure* (“Rules”), prior to proceeding. Upon resumption, the Tribunal discussed with the City and Applicant whether a hearing was required in the circumstances. Ultimately, it was the preference of the Applicant that the Tribunal hear evidence on the appeal. The Tribunal therefore proceeded to hear evidence on the variances.

[4] The Tribunal heard evidence from Jennifer Vida, whom it qualified to provide opinion evidence in the area of land use planning.

[5] At the conclusion of the hearing, the Tribunal dismissed the appeal and authorized the variances as provided for in the Committee’s decision (Exhibit 1, Tab 15).

[6] Counsel for the Applicant indicated that it wishes to seek costs against the Appellant. The Tribunal directs the Applicant to the Rules, particularly Rule 23 for the applicable process.

EVIDENCE AND ANALYSIS

Proposal and Site and Planning Context

[7] The proposal contemplates two three-storey apartment buildings (Building A and

Building B, per Exhibit 1, Tab 19). Each of the buildings is roughly in an L-shape with an interior area to be developed with pavers and soft landscaping. The pavers will allow for permeable storm water management. Soft landscaping is also proposed around the perimeter of the Subject Property.

[8] To the south of the Subject Property is existing low-rise residential. Future low-density residential development is anticipated to the north. There is nearby existing commercial and industrial land. High-density development is anticipated for the southwest corner of Kalar Road and McLeod Road.

[9] To the west is a storm water management channel and additional medium density designated lands. Ms. Vida indicated that these lands are now at the site plan approval stage for a condominium townhouse development.

[10] Kalar Road has sidewalks on both sides of the road at this juncture.

[11] In sum, Ms. Vida testified the area is now in the process of being developed as a complete community.

The Variances

[12] The Applicant seeks five variances from Zoning By-law No. 79-200, as amended by Zoning By-law No. 2012-119 (“ZBL”) (Exhibit 1, Tab 11). Zoning By-law No. 2012-119 was a zoning by-law amendment (“ZBLA”) which authorized R5C zoning for the Subject Property. The Subject Property was formerly an industrial site and has since been remediated.

[13] The ZBLA permitted apartment dwellings (medium density residential) with site specific zoning standards. Variances are now sought following the submission of revised development plans. The Committee authorized these on the strength of a positive staff report.

[14] The variances sought are the following:

- a. Lot coverage of 40%, whereas the ZBL permits a maximum lot coverage of 36%.
- b. A front yard depth of 18.3 metres (“m”) to the building front and 16.5 m from the road centreline to enclosed mechanical closets on the open balconies of Building A, whereas the ZBL requires a minimum front yard depth of 20.5 m.
- c. A 1.8 m projection of balconies into the northerly side yard, whereas the ZBL permits 0.45 m into any side yard.
- d. 40% of the lot area for the minimum landscaped open space, whereas the ZBL requires a minimum landscaped open space of 43% of the lot area.
- e. A 3.7 m interior side yard width to the northerly interior side yard enclosed mechanical closets of Building A, whereas the ZBL requires a minimum interior side yard width of 5.3 m.

[15] References in the above description to design features such as balconies and mechanical closets and to Building A reflect the revised drawings submitted in evidence (Exhibit 1, Tab 19). The development is also to subject site plan approval.

[16] Regarding the variances, Ms. Vida testified the following:

- a. The requested increase in lot coverage results from a design change. Ms. Vida noted that pavers are included in lot coverage. She advised that if the pavers were pavement, they would not be included in lot coverage.
- b. The increased lot coverage also impacts the minimum landscaped area requiring a reduction in minimum landscaped area from 43% to 40%.

- c. Regarding the minimum front yard, Ms. Vida indicated the City defines their front yard set back to the centre line of the road. A road widening requires dedication of lands to the City to allow for the sidewalk. This resulted in a reduced front yard set back. She indicated this reduction will be consistent with existing buildings along Kalar Road, creating a consistent street wall.

- d. Ms. Vida indicated that there are balconies on the north side but no balcony projections on the south façade, where the Appellant's property is located at 8305 Elderberry Drive. Similarly, the minimum side yard interior variance is also for the north property line to allow for enclosed mechanical units and similarly does not affect the Appellant's property. This variance allows for more useable space inside the unit.

Planning Act Obligations

[17] The *Planning Act* ("Act") places several obligations on the Tribunal when it makes a decision.

[18] The Act requires that every decision of the Tribunal be consistent with the Provincial Policy Statement, 2014 ("PPS") and, in this instance, that it also conform to the Growth Plan for the Greater Golden Horseshoe, 2017 ("2017 Growth Plan").

[19] Under s. 2, the Tribunal must have regard to matters of provincial interest, including the appropriate location of growth and development.

[20] Finally, the four-part test for minor variances under the Act is the following. The proposed minor variances must:

1. maintain the general intent and purpose of the Official Plan;
2. maintain the general intent and purpose of the Zoning By-law;

3. be desirable for the appropriate development or use of the land; and
4. be minor.

[21] Regarding the minor variance test, item 3) relates to desirability in the public interest, not that of an applicant. Regarding item 4), the main concern is unacceptable impacts.

Opinion Evidence

[22] Ms. Vida opined on the consistency with the PPS, conformity with the 2017 Growth Plan, and the four-part test for minor variances, with reference to the applicable official plan policies and the ZBL. In this case, the Tribunal must have reference to the Niagara Region Official Plan (“NROP”), the City’s Official Plan (“OP”) and the Garner South Secondary Plan (“GSSP”).

[23] Ms. Vida indicated the proposal is consistent with the PPS and conforms to the 2017 Growth Plan’s targets and goals for intensification in appropriately located areas. Additional density is intended under the GSSP for this location given its former status as a brownfield site. She indicated that it also improves the range of housing choices and reflects a sustainable use of municipal infrastructure.

[24] Ms. Vida noted that under the parent zoning by-law, a maximum height of 19 m is permitted. However, the proposal, originally designed for 15 m to address compatibility and transition, is now intended to proceed at 10 m in height. Roof top amenity space has been removed. In her opinion it is therefore more compatible with surrounding development than what was originally contemplated in 2012.

[25] Ms. Vida opined that the variances are minor with no impact anticipated. The increase in lot coverage is not noticeable and addresses the technical matter of pavers and all of it is internal to the site. The minimum front yard reduction is a reflection of the road widening and will result in a consistent streetscape. The balcony projection

variances and reduced side yard are all along the north side with the entire development being pushed to the north to avoid any variances along the south property line where there is existing residential development.

[26] Ms. Vida indicated the proposal is desirable for the appropriate development of the land. It is for two apartment buildings that the GSSP contemplates and which is supported with a site-specific zoning by-law. The variances respond to design and architectural details and ensure no adverse impacts on existing properties. They will facilitate the development of the land for its intended use.

[27] Ms. Vida testified that the proposal maintains the general intent and purpose of both the ZBL and the applicable official plans, for the reasons described.

[28] In sum, Ms. Vida was of the view that the proposed development represented good planning.

[29] The Tribunal adopts the uncontested evidence of Ms. Vida and finds the proposal is consistent with the PPS, conforms to the 2019 Growth Plan, has regard to s. 2 matters of provincial interest, and meets the test for minor variances under the Act.

ORDER

[30] The Tribunal dismisses the appeal and authorizes the variances to Zoning By-law No. 79-200, as amended by Zoning By-law No. 2012-119, all in accordance with the Committee's decision (Exhibit 1, Tab 15), appended as Attachment 1 to this Decision.

"Paula Boutis"

PAULA BOUTIS
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.

Local Planning Appeal Tribunal

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



DECISION OF THE COMMITTEE OF ADJUSTMENT

IN THE MATTER OF Section 45 of the Planning Act, (R.S.O. 1990); and

File: A-2018-027

IN THE MATTER OF:

NAME: Fernando Caella
 ADDRESS: 7549 Kalar Road

DESCRIPTION AND LOCATION OF SUBJECT LAND: For the property known as 7549 Kalar Road in the City of Niagara Falls.

NATURE AND EXTENT OF RELIEF APPLIED FOR: The applicant is proposing to construct two apartment buildings containing 50 units each on the subject property. Revised drawings were recently submitted that show the three storey buildings with a partial fourth storey containing a mechanical and amenity area. The height of the buildings comply with the site's zoning. The following variances are requested:

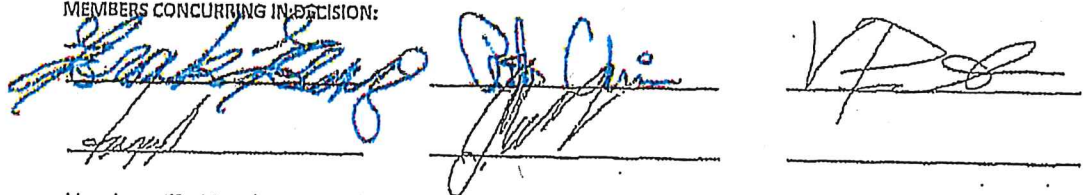
Provision	Required/Permitted	Proposed	Extent of Variance
Maximum lot coverage	36%	40%	4%
Minimum front yard depth	20.5 metres from road centreline	18.3 metres to building front and 16.5 metres from road centreline to enclosed mechanical closets on the open balconies of Building A	2.2 metres and 4 metres, respectively
Projection of balconies into side yard	0.45 metres into any required side yard	1.8 metres into the required northerly side yard	1.35 metres
Minimum landscaped open space	43% of lot area	40% of the lot area	3%
Minimum interior side yard width	5.3 metres	3.7 metres to the northerly interior side yard enclosed mechanical closets of Building A	1.6 metres

DECISION: Granted, pursuant to the provisions of Section 45 of the Planning Act, R.S.O. 1990.

REASON(S): The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application maintains the general intent and purpose of the Official Plan, maintains the general intent and purpose of the Zoning By-law, is desirable for the appropriate development of the land, building or structure, and is minor in nature.

CONDITION(S): The applicant planting mature and evergreen trees along the south property line to the satisfaction of City staff at the site plan stage.

MEMBERS CONCURRING IN DECISION:

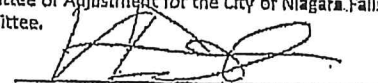
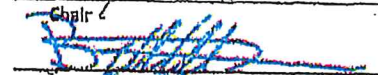


I hereby certify this to be a true and correct copy of the Decision of the Committee of Adjustment for the City of Niagara Falls and this decision was concurred in by the majority of the Members of the Committee.

DATE OF DECISION: September 25, 2018

DATE OF MAILING: September 27, 2018

FINAL DATE OF APPEAL: October 16, 2018


 Chair

 Secretary/Treasurer