



**THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE
COMMITTEE OF ADJUSTMENT PUBLIC HEARING MINUTES**

**Thursday August 18, 2011
7:30 p.m.**

The members of the Town of Niagara-on-the-Lake Committee of Adjustment met in the Council Chambers, Town Administration Building, 1593 Four Mile Creek Road, Niagara-on-the-Lake.

PRESENT:

Chair Michael Welsh, Members: John K. Bice, Ray Guy, Gracia Janes, Hilda McCann

REGRETS:

STAFF:

Cheryl Selig, Planner
Cathy Macdonald, Secretary-Treasurer

CALL TO ORDER:

The Chair called the meeting to order at 7:30 p.m., introduced Committee Members and requested that everyone in attendance turn off all electronic devices such as mobile phones, pagers, recording devices etc. The Chair welcomed those in attendance and advised that everyone present would be given an opportunity to comment regarding the applications being considered.

MINUTES:

1. Committee of Adjustment Hearing, July 21, 2011

Moved by Ray Guy, seconded by Hilda McCann, that the minutes of the Committee of Adjustment Public Hearing of July 21, 2011 be adopted.
APPROVED.

NEXT COMMITTEE OF ADJUSTMENT HEARING DATE:

1. September 15, 2011

CONFLICT OF INTEREST:

John Bice declared a pecuniary interest regarding 16 Wilberforce Avenue, Minor Variance Application A-32/11, as his company is representing the applicant.

No other conflict of interest was declared at this time.

CONFIRMATION OF APPLICATION NOTICE:

The Secretary-Treasurer confirmed that notice of the applications on the agenda was given in accordance with the provisions of the Planning Act.

REQUEST FOR WITHDRAWAL OR ADJOURNMENT:

The Secretary-Treasurer advised that no requests for withdrawal or adjournment were received.

Chair Michael Welsh explained the procedure for considering the applications.

APPLICATIONS:**1. 644 Concession 1 Road, Consent Application B-13/11**

Phil Tregunno was present on behalf of the application.

The subject parcel, shown as Part 1 on the drawing submitted, has 60.96 metres frontage on the west side of Concession 1 Road, lying south of Line 7 Road, being Part Niagara Township Lot 38, Town of Niagara-on-the-Lake. Application is made for consent to conveyance of 0.37 hectares of land, Part 1, with a dwelling known municipally as 644 Concession 1 Road, for residential use. 10.37 hectares of land, Part 2, is to be retained for agriculture use. This application has been filed as a disposal of surplus farm dwelling (new lot) application.

The Secretary-Treasurer read correspondence from: Town of Niagara-on-the-Lake Community & Development Services Department, Niagara Region Public Works Department and Niagara Peninsula Conservation Authority.

Phil Tregunno said disposal of the surplus dwelling will allow him to reduce operating costs; he understands and agrees with the requested conditions. There was no one in the audience who wished to speak regarding the application.

DECISION: *GRANTED subject to the following conditions*

1. That the applicants provide the Municipality with two copies of the deposited reference plan and a registrable legal description of the subject parcel, together with a copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.

2. The applicants receive approval for an amendment to the Zoning By-law to rezone Part 2 to "Agricultural Purposes Only (APO)" to preclude the construction of a dwelling.
3. The Part 1 be enlarged to provide a land area sufficient to ensure no adverse impact on the sensitive groundwater resources for the long term operation of a private sewage disposal system, to the satisfaction of the Niagara Peninsula Conservation Authority and Regional Development Services staff, with the final lot configuration to consider operational requirements / efficiencies on the remaining agricultural land.

REASONS: The Planning Act provides that in considering a consent application the approval authority shall have regard to matters of Provincial interest, which includes whether the proposal is premature or in the public interest; whether the proposal conforms to the Official Plan, the suitability of the land for the development; the adequacy of the roadways; the dimensions and shapes of the proposed lots; any restrictions on the land; conservation of natural resources; the adequacy of services, etc. Based on review the application satisfies the Planning Act criteria. The Provincial Policy Statement, the Greenbelt Plan, the Regional Policy Plan and the Town Official Plan all permit the severance of a residence existing as of December 16, 2004 that is surplus to a farm operation as a result of a farm consolidation provided that no new residential dwellings are permitted on any remnant farm land created by the severance. A farm consolidation is defined as the acquisition of additional farm parcels to be operated as one farm operation. The application meets the intent of the surplus farm dwelling severance criteria as the dwelling pre-dates the Greenbelt Plan and is surplus as a result of acquisition of additional farm land by a farmer who farms a number of other farm parcels that he owns, approximately 263 hectares. The dwelling is surplus to the needs of the purchasing farmer as his principle residence is located on Niagara River Parkway. This property is located outside the urban area boundary in an area that is predominately agricultural in use. The proposal to convey a surplus farm dwelling meets the intent of the relevant Provincial, Regional and Town policies. The Niagara Region and the Conservation Authority have no objection to the application subject to Part 1 being enlarged to their satisfaction to ensure adequate protection of groundwater and to support long term operation of the sewage disposal system. The property is in a Highly Vulnerable Aquifer area, which may be subject to groundwater contamination, and based on an analysis by the Niagara Peninsula Conservation Authority a lot area close to 1 hectare may be required. As farm parcel, Part 2, cannot be merged with the other lands owned by the purchasing farmer consent approval is conditional upon a zoning amendment to preclude construction of a new dwelling. Subject to the conditions of approval the application meets the Planning Act criteria for lot creation, is consistent with the Provincial Policy Statement and complies with the Greenbelt Plan, the Regional Policy Plan and the Town Official Plan.

Committee Chair Michael Welsh summarized the conditions and the reasons for the decision.

2. **200 Four Mile Creek Road, Consent Application B-14/11**

Glenn Barr was present on behalf of the application.

The subject parcel, shown as Part 1 on the drawing submitted, is an interior parcel, 40.85 metres wide, at the rear / west side of the property known municipally as 200 Four Mile Creek Road, lying south of Warner Road, being Part Niagara Township Lot 90, Town of Niagara-on-the-Lake. Application is made for consent to partial discharge of mortgage, mortgage or charge and conveyance of 726 square metres of land, Part 1, which is to be merged with the adjacent property known municipally as 214 Four Mile Creek Road (Assessment Roll Number 2627020025081000000), for residential use / future development. 1,362 square metres of land, Part 2, with a dwelling known municipally as 200 Four Mile Creek Road, is to be retained for detached dwelling use.

The Secretary-Treasurer read correspondence from: Town of Niagara-on-the-Lake Community & Development Services Department, Niagara Region Public Works Department and Niagara Escarpment Commission.

Glenn Barr said they agree with the conditions in the Planner's report except that the grading condition as worded is impractical to complete at this time, and based on their discussions with Town Public Works Department they are requesting it be amended to confirm that grading will be addressed in conjunction with future development; the future subdivision development is in the preliminary stage and this severance is required to make the large parcel developable; there will special treatment for the historic house at 214 Four Mile Creek Road; subdivision access will be from Warner Road. Committee Members commented that based on the supplementary information from the Town Public Works Department and from Glenn Barr they support amending the requested grading condition.

Moved by Ray Guy, seconded by John Bice, that if application B-14/11 is granted the requested grading condition is amended as follows: That the Applicants satisfy the Town Director of Public Works that lot grading will be done in conjunction with future development. APPROVED.

There was no one in the audience who wished to speak regarding the application.

DECISION: *GRANTED subject to the following conditions*

1. That the applicants provide the Municipality with two copies of the deposited reference plan and a registrable legal description of the subject parcel, together with a copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.

2. That the subject land, Part 1, is merged with the property, known municipally as 214 Four Mile Creek Road.
3. That the Applicants satisfy the Town Director of Public Works that lot grading will be done in conjunction with future development.

REASONS: The Planning Act provides that in considering a consent application the approval authority shall have regard to matters of Provincial interest, which includes whether the proposal is premature or in the public interest; whether the proposal conforms to the Official Plan, suitability of the land for the development; adequacy of roadways; dimensions and shapes of the proposed lots; any restrictions on the land; conservation of natural resources; adequacy of services, etc. Based on review this application satisfies the Planning Act criteria. The application is consistent with the Provincial Policy Statement, the Growth Plan and the Regional Policy Plan policies that promote the efficient use of urban land and infrastructure. The land is designated Low Density Residential in the Town Official Plan, which permits single detached, semi-detached, and duplex dwellings. As this is a boundary adjustment to merge an interior parcel with the property at 214 Four Mile Creek Road, which is a residential property, the application is consistent with the policies of the Official Plan. Part 2, with the existing dwelling, will meet all zoning requirements. Part 1 will be merged with 214 Four Mile Creek Road and this lot will meet all zoning requirements for a single detached dwelling. The property at 214 Four Mile Creek Road is designated under the Ontario Heritage Act and the addition of Part 1 will require a minor amendment to the designation by-law. This amendment will be undertaken after the consent is finalized. The lot addition does not affect the heritage attributes of the property. The subject property is located within the St. Davids urban area boundary. It is anticipated there will be a future development application for 214 Four Mile Creek Road and this boundary adjustment is part of the process of land acquisition and creating a more regular lot shape, which will facilitate the efficient development of the property. Part 2 will be retained for continued single dwelling use. This application is a minor boundary adjustment and the interior lot to be severed is to be merged with a larger lot. This application meets all policies and zoning requirements provided that Part 1 is merged with the lands at 214 Four Mile Creek Road. Lot grading will be addressed at the time of development application for the entire property given that at this time the proposal is simply to merge a small portion of land with a larger parcel. Subject to the conditions of approval the application is consistent with Town, Regional and Provincial policies.

Committee Chair Michael Welsh summarized the conditions and the reasons for the decision.

3. **86 Gage Street**
Consent & Minor Variance Applications B-15/11 & A-27/11

Michael Mitchell was present on behalf of the application.

B-15/11: The subject parcel, shown as Part 2 on the drawing submitted, has 16.15 metres frontage on the south side of Gage Street, lying east of Victoria Street, being Part of Lot 152 Plan 86, Town of Niagara-on-the-Lake. Application is made for consent to conveyance of 516.9 square metres of land, Part 2, for residential use. 497.7 square metres of land, Part 1, with a dwelling and a garage, known municipally as 86 Gage Street, is to be retained for residential use.

A-27/11: To accommodate the consent, variances are requested for property zoned "Old Town Community Zoning District - Established Residential (ER)" as follows:

1. Lot frontage from the average of the lot frontage of existing lots in the same block face from 16.08 metres as required in the Zoning Bylaw, to 15.50 metres for Part 1.
2. Maximum lot coverage from 33% as permitted in the Zoning By-Law to 33.5% for the existing dwelling and garage on Part 1.

The Secretary-Treasurer read correspondence from: Town of Niagara-on-the-Lake Community & Development Services Department, Richard Monette and Connie Tintinalli and Gerald Pepe.

Michael Mitchell said in regard to the neighbours' objections, the Applications meet Town Official Plan and Provincial policy and all concerns regarding grading and streetscape would be addressed through the requested conditions; the requested variances are minor; they understand and agree with the requested conditions. In response to a request from Committee Member Gracia Janes Planner Cheryl Selig explained the Zoning By-Law frontage provisions. There was no one in the audience who wished to speak regarding the application.

B-15/11

DECISION: GRANTED subject to the following conditions

1. That the applicants provide the Municipality with two copies of the deposited reference plan and a registrable legal description of the subject parcel, together with a copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.
2. That an archaeological assessment is conducted on Part 2 pursuant to the archaeological assessment procedure policy.
3. The applicants pay to the Municipality a cash-in-lieu of parks dedication fee, which shall be 5% of the appraised value of the new lot (Part 2).
4. The applicants obtain an appraisal, at their own expense, which is to be based on the fair market value of the new lot, using the direct comparison approach.
5. That there be no interconnection of services or easement of services between Parts 1 and 2 of the proposed severance. Part 1 will be required to connect new services for water and sanitary and Part 2 will be required to connect new service for storm water.
6. That the necessary variances are obtained to recognize the reduced lot frontage and to exceed the maximum lot coverage for Part 1.

REASONS: The Planning Act provides that the approval authority in considering a consent application shall have regard to matters of Provincial interest such as the appropriate location of growth and development and to such matters as whether the proposal is premature or in the public interest; whether it conforms to the official plan and adjacent plans of subdivision; suitability of the land for the development; adequacy of roadways; dimensions and shapes of proposed lots; adequacy of services, etc. Based on review this application satisfies the Planning Act criteria and is consistent with Provincial Policy Statement, Growth Plan and Regional Policy Plan policies that promote the efficient use of urban land and infrastructure. The proposed new lot is consistent with other lots on the south side of Gage Street and creation of this new lot is a minor intensification of residential development. The property is within the Old Town urban area and is designated Established Residential in the Town Official Plan, which permits residential uses. The Official Plan goals and objectives support residential development that is compatible with existing surrounding land uses and is well designed to fit within the context of an area. The goals and objectives relevant to this application include: to ensure new development or redevelopment is appropriately located and compatible with surrounding land uses, incorporates energy efficient aspects in its design, retains to the greatest extent feasible desirable natural features and uses land in an efficient manner; to ensure existing housing and residential areas are preserved and improved; to encourage infill residential development of vacant or underutilized parcels of land in residential areas where it will be compatible with existing uses and contribute to the more efficient use of sewer and water services and community facilities; to encourage the development of well-designed and visually distinctive forms; construction of additions or new structures shall complement existing adjacent development in terms of scale, character, height, design and mass; to promote maintenance and rehabilitation of existing housing stock. Subject to the conditions of approval this application meets the intent of the Town Official Plan. This area includes a variety of lot sizes and dwelling styles that contribute to the character of the neighbourhood. The lots on Gage Street between Regent and Victoria Streets are of fairly consistent size except for the corner lot at Regent and Gage, which technically has frontage on Regent Street with the Gage Street boundary being a side lot line. Creation of this new lot is in keeping with the context of the neighbourhood and is consistent with Provincial, Regional and Town policies for in-fill development, i.e. in urban areas with services and fronting on public streets, efficient use of existing infrastructure, efficient use of land and respect for existing built form. As the property is within the zone of archaeological potential, an archaeological assessment is required. Consent approval is also conditional on parks fee payment, as this application creates a new lot that will result in a new dwelling unit and increase the demand for park space and on services being addressed to the satisfaction of the Town Public Works Department. Part 1 is subject to a variance application for lot frontage and lot coverage; authorization of these variances will address the Zoning By-Law requirements for Part 1.

Subject to the conditions of approval the application is consistent with Town, Regional and Provincial policies.

A-27/11

DECISION: *GRANTED subject to the following conditions*

1. Prior to application for a building permit, submission of a lot grading plan subject to the approval of the Department of Public Works for management of surface drainage and collected runoff on Part 2 to insure no negative grading or drainage effect on neighbouring properties; and
2. Prior to issuance of a building permit, any proposed dwelling shall be subject to urban design approval.

REASONS: This Application has been reviewed with regard to the tests for a minor variance as outlined in the Planning Act and has been found to meet these tests. The requested frontage variance is minor as the lot is consistent with the established lotting pattern in the area, especially along the south side of Gage Street. The proposed lot frontage will not negatively affect the established lotting pattern in the neighbourhood and is minor. The lot coverage variance to accommodate the existing house and shed is minimal, the impact is minor and it will not result in a noticeable difference. Lot coverage regulations ensure there is sufficient landscaped yard area and a balance between the structures and amenity space, based on the lot size and these are achieved in this case. The requested variances are appropriate given that they accommodate creation of a new infill lot for residential development within the urban area of Old Town, a lot which can accommodate a proposed dwelling. The requested variances will not adversely affect the development of the property or adversely impact the character of the neighbourhood. Infill housing development is strongly encouraged by Provincial, Regional and Town policies and therefore these variances are appropriate as they contribute to a more compact built environment in an area that has access to municipal services and is within walking distance of many amenities. The general intent and purposed of the Zoning By-law is to provide for the orderly development of land through land use controls such as permitted uses, minimum lot dimensions, setbacks, lot coverage etc. Minimum lot frontage requirements are provided to ensure parcels are sufficient in size to properly locate a building and to orient houses toward a street, and lot coverage restrictions are intended to create an appealing neighbourhood aesthetic. The objective of applying contextual zoning standards is to ensure development is compatible with adjacent properties and is not out of character with the streetscape. Therefore the general intent and purpose of the By-law is maintained because the proposed lot frontage is very close to meeting the zoning standard and there is a lot next to it with a smaller frontage. The lot coverage variance meets the intent and purpose of the By-law as it is a very minimal increase in lot coverage. The goal of the Official Plan is to ensure that housing within residential designations is compatible with the surrounding land uses, and that it efficiently utilizes urban land and public infrastructure, and it is well designed.

Variance approval is conditional upon grading plan and urban design approvals to ensure there is no negative grading / drainage effect on neighbouring properties and to ensure any new dwelling is compatible with the neighbourhood and high quality design in an established neighbourhood. The two lots will be compatible with the neighbourhood in terms of use and size and subject to the conditions the Application maintains the general intent and purpose of the Official Plan. Subject to the conditions of approval, the Application meets the Planning Act tests for a Minor Variance, being that the variances are minor in nature from the provisions of the Zoning By-Law and are appropriate for the development of the land and the general intent and purpose of the Zoning By-Law and the Official Plan is maintained.

Committee Chair Michael Welsh summarized the conditions and the reasons for the decision.

4. **370 Gate Street**
Consent & Minor Variance Applications B-16-17/11 & A-28-29/11

Jennifer Vida of Upper Canada Consultants was present on behalf of the applications.

B-16-17/11: The subject land is known municipally as 370 Gate Street, lying south of Centre Street, being Part of Lots 198, 231 and 232 Plan 86, Town of Niagara-on-the-Lake. **B-16/11:** The subject parcels, shown as Parts 3 & 4 and Part 2 on the drawing submitted, have 5.08 and 3.0 metres frontage on the east side of Gate Street. Application is made for consent to conveyance of 896.9 square metres of land, Parts 3 & 4, for residential (single detached) use subject to easement in perpetuity for shared driveway access over Part 3 in favour of Parts 1 & 2 and together with easement in perpetuity for shared driveway access over Part 2 in favour of Parts 3 & 4. 1,678.6 square metres of land, Parts 1 & 2 and Part 5, with a dwelling known municipally as 370 Gate Street, is to be retained for residential and access use. **B-17/11:** The subject parcels, shown as Parts 1 & 2 and Part 3 on the drawing submitted, have 5.08 and 3.0 metres frontage on the east side of Gate Street. Application is made for consent to conveyance of 1,111.1 square metres of land, Parts 1 & 2, for residential (single detached) use subject to easement in perpetuity for shared driveway access over Part 2 in favour of Parts 3 & 4 and together with easement in perpetuity for shared driveway access over Part 3 in favour of Parts 1 & 2. 567.5 square metres of land, Part 5, with a dwelling known municipally as 370 Gate Street, is to be retained for residential use. Through these applications the Applicant proposes to create two new building lots with a shared driveway.

A-28-29/11: To accommodate the consents, variances are requested for property zoned "Old Town Community Zoning District - Established Residential (ER)" as follows:

A-28/11:

1. Lot frontage from the average of the lot frontage of existing lots in the same block face from 22.15 metres as required in the Zoning Bylaw, to 5.075 metres for Parts 3 & 4.
2. Minimum rear yard setback from 7.5 metres as required in the Zoning By-law to 2.0 metres for the proposed dwelling on Parts 3 & 4.
3. Minimum driveway setback from interior property line from 1.0 metre as required in the Zoning By-Law to 0 for the proposed driveway for Parts 3 & 4.

A-29/11:

1. Lot frontage from the average of the lot frontage of existing lots in the same block face from 22.15 metres as required in the Zoning Bylaw, to 5.075 metres for Parts 1 & 2.
2. Minimum driveway setback from interior property line from 1.0 metre as required in the Zoning By-Law to 0 for the proposed driveway for Parts 1 & 2.
3. Lot frontage from the average of the lot frontage of existing lots in the same block face from 22.15 metres as required in the Zoning Bylaw, to 21.74 metres for Part 5.
4. Lot depth from the average of the lot depth of existing lots in the same block face from 55.98 metres as required in the Zoning Bylaw, to 26.0 metres for Part 5.
5. Maximum projection into required rear yard from 1.5 metres as permitted in the Zoning By-law to 4.31 metres for the existing uncovered deck on Part 5.

The Secretary-Treasurer read correspondence from: Town of Niagara-on-the-Lake Community & Development Services Department, Niagara Peninsula Conservation Authority, Michael Adamson and Sally Adamson, Michael J. Fox, Michael Howe, Michel Jaffre, Mariitta Maavara, Harvey Wright and Victoria Wright, Christina Moon and Don Moon, Audrey Ortbach and Fred Ortbach, Monique Portelli and Patrick Portelli, Jim Reynolds, Joy M. Rogers, Paul W. Shepherd and Richard Sherk and Susan Sherk, including a petition.

Jennifer Vida said they concur with Town Staff recommendations and are working to make sure the Applications will create lots that fit and on grading and drainage; changes to the original plan include fewer units, more buffering between adjacent uses, 2 storey to 1½ storey to reduce size and added architectural features to make the dwellings more attractive; the applications are consistent with Town Official Plan policies for infill and the variances meet the four Planning Act tests; there are other similar developments so this proposal is not contrary to Town policy; they have made changes to lessen the impact and are willing to meet with neighbours after approval to ensure the new lots are sympathetic to the neighbourhood; they request approval of the Applications with the amendments recommended in the Planner's reports.

Committee Member Gracia Janes commented that examples in the Planner's report are not good, e.g. Delater Street frontages are causing problems. Committee Member John Bice commented that the total frontage for the two proposed new lots is 11 metres, so even if only one new lot was proposed it would still need a variance. Committee Member Gracia Janes asked why this proposal wasn't dealt with through the subdivision process. Jennifer Vida said they originally proposed a subdivision but because of the small frontage it was not feasible. In response to questions from Committee Members Planner Cheryl Selig said when only a few lots are to be created the Town practice is to use consent process rather than the subdivision process; the requested easement for access would address any legal issues with the proposed shared driveway; the proposed frontages would permit separate services as required by Town policy; there are no similar developments in this area and this proposal would be unusual in this area,

Paul Shepherd said this proposal is unique in this area and addresses infill policy but does not comply with the intent of contextual zoning in this area, e.g. grid system and spacing between houses, and examples in the Planner's report are not comparable with this development. Michael Fox said approval of these applications would be contrary to Official Plan policy and the Zoning By-Law. Harvey Wright asked if the plan had been reviewed by the Fire Department and if trees removed from the driveway would have to be replaced. Planner Cheryl Selig said the Fire Department reviewed the Applications and has no concerns; there are no natural features, i.e. creeks and significant tree stands, identified on the property for preservation. Patrick Portelli said he objects to the Applications because of concerns regarding fire safety, snow removal, because the driveway is large and snow likely could be put on the adjacent property and noise, because the driveway is adjacent to a future house location. Audrey Ortbach said 370 Gate Street has been backfilled with construction material and the grade altered and she wants to make sure the Creek is not being poisoned; she is also concerned with snow removal and snow being piled on other properties; she has no proof regarding contamination of the Creek.

Jennifer Vida said the Fire Department and Niagara Peninsula Conservation Authority have no issues with the Applications; there is plenty of room on site for snow removal and garbage and there will not be an impact outside of the site; they have made revisions to make sure the development is sensitive to existing uses. Committee Member Hilda McCann commented that favourable comparisons in the Planner's report with lots on Delater Street (No. 23, 25 & 27) that have narrow entrances are inappropriate as they differ, since the Delater Street lots back onto the Niagara River and not onto an adjacent lot as these proposed lots do, and creating the Delater Street lots accommodated acquisition of public land.

Paul Shepherd said the requested variances all together and individually are not minor, particularly lot sizes.

Christina Moon said they are building a house at 123 William Street and will have a small back yard to accommodate zoning regulations and she objects to the applications as one of the proposed houses will be close to their house and they will lose privacy.

Committee Member Gracia Janes commented that this proposal is extraordinary and causes quite a bit of difficulty for the area and there is no need for it. Planner Cheryl Selig said policies call for infill, and a target is set, so opportunities for infill have to be examined. Committee Member Hilda McCann asked if fill on the property would affect an archaeological assessment. Planner Cheryl Selig said fill issues would have to be addressed during construction. Jennifer Vida requested that the Minor Variance Applications be approved and said they have worked to minimize impact, the proposal conforms to density, infill, Zoning By-Law and Official Plan policies; they understand the requested conditions. Committee Member John Bice commented that it is difficult to support the Applications as the proposed shared driveway and two lots with too small frontages would have a negative impact on the area. Committee Member Ray Guy said the development examples in the Planner's report are not relevant to these Applications; permitting flag lots, a shared driveway for residential lots and the length of the driveway have an impact on neighbouring properties in the unique Old Town area and are policy decisions that should be made by Town Council, not through Consent and Minor Variance applications. Committee Member Hilda McCann commented that the lots are not appropriately located and are not compatible with the surrounding land; she agrees with comments by Committee Members John Bice and Ray Guy. Committee Member Gracia Janes commented that she agrees with the other Committee Members; there are other places where this type of development could happen too and Consent and Minor Variance applications aren't the right way to deal with this type of proposal. Committee Members agreed that the variances do not meet the Planning Act tests as they are not minor in nature, are not appropriate for the development of the land and the general intent and purpose of the Zoning By-Law and the Official Plan is not maintained; the requested Variances individually and all together are not minor and would accommodate development that is not appropriate and would not fit in this area; they do not maintain the intent of the Town Official Plan. In addition, the proposed development does not maintain the intent of the Town Official Plan policies as it is not appropriately located and is not compatible with surrounding land uses; the requested severances would permit development that is not appropriate and would not fit in this area and do not meet the intent of the Provincial, Regional and Town Official Plan policies and the Zoning By-Law regarding infill development as the lots are not appropriately located, the dimensions and shapes of proposed lots are not appropriate, the lots are not compatible with the surrounding land and don't fit the context of the area.

B-16-17/11

DECISION: *REFUSED*

REASONS: There are no other developments like this in this neighbourhood area, i.e. flag lots with narrow frontage, shared driveway and houses behind existing dwellings, therefore this would be an unusual development in this area and incompatible with this area. This development proposal does not comply with the intent of contextual zoning in this area, e.g. grid system and spacing between houses, and examples in the Planner's report are not comparable with / relevant to this development. Favourable comparisons with lots on Delater Street (No. 23, 25 & 27) that have narrow entrances are inappropriate as they differ, since the Delater Street lots back onto the Niagara River and not onto an adjacent lot as these proposed lots do, and creating the Delater Street lots accommodated acquisition of public land. This proposal is extraordinary and causes quite a bit of difficulty for the area and there is no need for it. The proposed shared driveway and two lots with too small frontages would have a negative impact on the area. There are other places where this type of development could happen too and Consent and Minor Variance applications aren't the right way to deal with this type of proposal. Permitting flag lots, a shared driveway for residential lots and the length of the driveway have an impact on neighbouring properties in the unique Old Town area and are policy decisions that should be made by Town Council, not through Consent and Minor Variance applications. The requested severances would permit development that is not appropriate and would not fit in this area; they do not meet the intent of the Provincial, Regional and Town Official Plan policies and the Zoning By-Law regarding infill development as the lots are not appropriately located, the dimensions and shapes of proposed lots are not appropriate, the lots are not compatible with the surrounding land and don't fit the context of the area.

A-28-29/11**DECISION: *REFUSED***

REASONS: The variances do not meet the Planning Act tests for a Minor Variance as they are not minor in nature, are not appropriate for the development of the land and the general intent and purpose of the Zoning By-Law and the Official Plan is not maintained. The total frontage for the two proposed new lots is 11 metres, so even if only one new lot was proposed it would still need a variance from the required 22 metres; the requested frontage variances are not minor. There are no other developments like this, i.e. flag lots with narrow frontage, shared driveway and houses behind existing dwellings, in this neighbourhood area; therefore this would be an unusual development in this area and incompatible with this area. This development proposal addresses infill policy but does not comply with the intent of contextual zoning in this area, e.g. grid system and spacing between houses, and examples in the Planner's report are not comparable with / relevant to this development. Favourable comparisons with lots on Delater Street (No. 23, 25 & 27) that have narrow entrances are inappropriate as they differ, since the Delater Street lots back onto the Niagara River and not onto an adjacent lot as these proposed lots do, and creating the Delater Street lots accommodated acquisition of public land.

This proposal is extraordinary and causes quite a bit of difficulty for the area and there is no need for it. The proposed shared driveway and two lots with too small frontages would have a negative impact on the area. There are other places where this type of development could happen too and Consent and Minor Variance applications aren't the right way to deal with this type of proposal. Permitting flag lots, a shared driveway for residential lots and the length of the driveway have an impact on neighbouring properties in the unique Old Town area and are policy decisions that should be made by Town Council, not through Consent and Minor Variance applications. The requested Minor Variances individually and all together are not minor and would accommodate development that is not appropriate and would not fit in this area; they do not maintain the intent of the Town Official Plan. In addition, the proposed development does not maintain the intent of the Town Official Plan policies as it is not appropriately located and is not compatible with surrounding land uses.

Committee Chair Michael Welsh summarized reasons for the decisions.

5. 538 Niagara Boulevard, Minor Variance Application A-30/11

John Verdonk was present on behalf of the application.

The subject land is known municipally as 538 Niagara Boulevard, lying west of Wilberforce Avenue, being Plan 73A Lot 191, Town of Niagara-on-the-Lake. The applicant proposes to construct a dwelling on the subject lot. To accommodate the proposal a variance is requested for property zoned "Old Town Community Zoning District - Established Residential (ER2)" as follows:

1. Building height (peak) from the average existing building height within the same block face, 8.1 metres, as permitted in the Zoning Bylaw, to 9.52 metres for the proposed dwelling.

The Secretary-Treasurer read correspondence from: Town of Niagara-on-the-Lake Community & Development Services Department, Niagara Peninsula Conservation Authority, Pat Collard and Randy Busbridge.

John Verdonk submitted a revised north elevation sketch and said they agree with the Planner's recommendation; they have addressed urban design concerns e.g. porch, garage, cladding etc.; the height calculation in P. Collard's letter is incorrect; they haven't reduced the height as they're trying to be in keeping with the existing streetscape and it is very difficult to lower the height for 2 storey house and keep architectural features as it would end up with a very flat roof. Miriam McEwen said the height doesn't fit zoning requirements. Victor Tarnoy submitted a sketch showing the height of his house and said the subject property is above street level so the proposed height, highest in the neighbourhood, would have more impact; they could accommodate a reduction in height by design or 1½ storey style; the height is not necessary as the space would be unusable and create negative impact, e.g. sunlight etc.,

his objection is based on context, i.e. the proposed height in this area; his information about house heights in the area is based on his photographs; there should be good reason to exceed the Zoning By-Law regulation; this house is in a strategic spot in Chautauqua, e.g. view of lake, park etc.

Committee Member John Bice commented that the historical area of the Old Town doesn't extend to Chautauqua as it is mostly cottages. Committee Chair Michael Welsh commented that approval of this application would increase the average height on the street.

Kate Sullivan said the height is too tall, out of keeping with the context of the neighbourhood, particularly because the space would not be used, and a detriment to the neighbourhood. Alan Root, owner of the subject property, said the house would not be tallest in the neighbourhood; rather the house at 548 Niagara Boulevard is the highest. John Verdonk said the requested variance is minor, the height above street level is less than stated by V. Tarnoy; heights and elevations on the Application sketch are accurate as they were provided by an Ontario Land Surveyor.

Committee Member Ray Guy commented that there is a lack of consideration regarding context and whether it fits with the neighbourhood; the proposed house would be one of the highest, too high for the area. Committee Member Gracia Janes commented that Chautauqua is a significant historic neighbourhood.

DECISION: REFUSED

REASONS: Chautauqua is a significant historic neighbourhood and the height for the proposed dwelling should be reduced to be compatible with the neighbourhood, i.e. average existing height on the back face 8.1 metres, existing houses: one 2 storey, two 1 ½ storey and one 1 storey. Authorizing the requested variance would increase the average height on Niagara Boulevard; therefore the variance is not minor and is not appropriate. There is a lack of consideration regarding context for this proposal and whether it fits with neighbourhood; at the proposed height of 9.52 metres the two storey house would be one of the highest, too high for the surrounding area. Therefore the application does not meet all four Planning Act tests for a minor variance; the variance is not minor in nature from the provisions of the Zoning By-Law and is not appropriate for the development of the land and the general intent and purpose of the Zoning By-Law and the Official Plan is not maintained.

Committee Chair Michael Welsh summarized reasons for the decision.

6. 188 Front Street North, Minor Variance Application A-31/11

Harold Asikyan was present on behalf of the application.

The subject land is known municipally as 188 Front Street North, lying east of Simcoe Street, being Plan 86 Part of Lots 15 and 16, Town of Niagara-on-the-Lake. The applicant proposes to construct a dwelling on the subject lot. To accommodate the proposal variances are requested for property zoned "Old Town Community Zoning District - Established Residential (ER)" as follows:

1. Minimum front yard setback from average of existing main building front setbacks on the same block face, 11.55 metres, as required in the Zoning By-law, to 9.12 metres for the proposed dwelling.
2. Maximum building height (peak) from the average existing building height within the same block face, 8.12 metres, as permitted in the Zoning Bylaw, to 9.76 metres for the proposed dwelling.

The Secretary-Treasurer read correspondence from: Town of Niagara-on-the-Lake Community & Development Services Department.

Harold Asikyan said they met with the Municipal Heritage Committee (MHC), which recommended a higher pitch roof to fit with the surrounding area; they agree with the recommendation in the Planner's report. Committee Member Gracia Janes commented that while the proposed height results from a higher pitched roof style in keeping with Colonial Revival style architecture, the need for it isn't clear and it conflicts with the contextual zoning intent. Harold Asikyan said before MHC consultation the height was 2 feet (0.61 metres) lower. Committee Members Gracia Janes and Hilda McCann commented that they can't support the requested height variance as it could be lower and architectural / style considerations shouldn't outweigh contextual zoning considerations. Committee Member Hilda McCann commented that the requested setback variance is appropriate. Harold Asikyan said the requested height is lower than the average on Front Street and fits with the area and the pitch is common in the area. Committee Chair Michael Welsh commented that although the Owner is trying to do the right thing by increasing height to meet MHC recommendations, the average block face height would increase if this variance was authorized, which has a direct consequence regarding block face height. There was no one in the audience who wished to speak regarding the application.

DECISION: *Variance 1* **GRANTED**
Variance 2 **REFUSED**

REASONS:

Variance 1: The front yard for this property is on Simcoe Street and the proposed dwelling will have the same front yard setback as the adjacent dwelling, 116 Simcoe Street. In this case the requested front setback variance is minor and will not have an adverse impact on adjacent lands, will not reduce the space available for amenity use on the lot and will not negatively impact the streetscape. The proposed front setback distance will not adversely affect the use of the property for residential purposes and will not adversely impact the general character of the surrounding residential area and is appropriate for the development of the land.

The purpose of contextual zoning standards that apply to this property is to preserve the character of established neighbourhoods, including regulation of new building setback from the street line to ensure they are consistent with existing neighbourhood character. The subject property was created as an infill lot in an established neighbourhood where there are varying setbacks. The proposed front setback is sufficient for maintenance and will provide sufficient amenity space; it does not compromise good planning standards. Therefore the intent of the Zoning By-Law is maintained. An important objective of the Established Residential area Official Plan policies is to ensure construction of new structures complements existing adjacent development. The proposed front yard setback is compatible with the surrounding community and does not adversely affect the character of this residential area; the intent of the Official Plan is maintained. Variance 1 meets the Planning Act tests for a Minor Variance, being that the variance is minor in nature from the provisions of the Zoning By-Law and is appropriate for the development of the land and the general intent and purpose of the Zoning By-Law and the Official Plan is maintained.

Variance 2: Although the proposed height results from a higher pitched roof style in keeping with Colonial Revival style architecture, it conflicts with the contextual zoning intent to preserve the character of established neighbourhoods by regulating the height and bulk of new buildings to ensure buildings are consistent with existing neighbourhood character. The Applicant's Agent advised that the original height was 2 feet (0.61 metres) lower prior to adjusting the roof pitch to be in keeping with the Colonial Revival style; therefore the proposed height is not appropriate as it could be lower and architectural considerations shouldn't outweigh contextual zoning considerations. The average block face height would increase if this variance was authorized, which has a direct consequence regarding block face height; the variance is not minor or appropriate. Variance 2 does not meet all four Planning Act tests for a Minor Variance, being that the variance is not minor in nature from the provisions of the Zoning By-Law and is not appropriate for the development of the land and the general intent and purpose of the Zoning By-Law and the Official Plan is not maintained.

Committee Chair Michael Welsh summarized reasons for the decision.

Committee Member John Bice left the hearing.

7. 16 Wilberforce Avenue, Minor Variance Application A-32/11

Jennifer Vida and Josh Bice were present on behalf of the application.

The subject land is known municipally as 16 Wilberforce Avenue, lying south of Niagara Boulevard, being Plan 73A Lot 184 Lot 185, Town of Niagara-on-the-Lake. The applicant proposes to construct a dwelling on the subject lot.

To accommodate the proposal a variance is requested for property zoned "Old Town Community Zoning District - Established Residential (ER2)" as follows:

1. Maximum building height (peak) from the average existing building height within the same block face, 6.12 metres, as permitted in the Zoning Bylaw, to 9.75 metres for the proposed dwelling.

The Secretary-Treasurer read correspondence from: Town of Niagara-on-the-Lake Community & Development Services Department, Mary Jane Grant and Perry Quinn, Susan Baxter and Gary Farrar and Pamela Farrar.

Committee Chair Michael Welsh asked Josh Bice if he had a conflict of interest with Michael Welsh or any of the Committee Members. Josh Bice said he did not have a conflict of interest and the Committee Members said they did not have a conflict of interest.

Jennifer Vida said the Wilberforce Avenue neighbourhood is in transition from cottages to two storey homes and the proposed house will comply with all contextual zoning regulations except height and won't exceed the highest height in the area or set a precedent; the Urban Design review indicates the design fits with the neighbourhood; they agree with the Planner's report recommendation and findings; the requested variance meets the four Planning Act tests and they request it be approved. Josh Bice said they weren't opposed to reducing the height but weren't required to do so at the Urban Design review stage; however the Owner is willing to reduce the height if required. Committee Chair Michael Welsh commented that urban design considerations shouldn't outweigh the Zoning By-Law contextual zoning intent and asked if the representatives wished to request an adjournment to amend the Application. Josh Bice said they do not wish to adjourn the Application but would be willing to reduce the height by 1 metre. Committee Chair Michael Welsh commented that he is not willing to vote on an amendment that still requires a variance. Committee Member Ray Guy commented that he would prefer to deal with the Application as submitted or an adjournment to deal with an amendment. Josh Bice requested that the Application be dealt with as submitted.

Susan Baxter said she objects to the height as it is not useable space and is higher than average; if the height was 8.3 metres she would be happy but the proposed height for the middle section is not acceptable. Kate Sullivan read and submitted a letter of objection from Peter Hancock; and said she objects to the variance as it would be empty space and not in keeping with neighbourhood; the rest of the house is acceptable but not the highest section. Victor Tarnoy said Chautauqua is unique; both historic and newer two storey houses achieve that in a 1½ storey design; the proposed roof is massive, gives unusable space and has great negative impact; other tall roofs in the area are not as massive, e.g. have towers, dormers etc.

Committee Chair Michael Welsh asked the representatives if they wished to adjourn and gather more information. Josh Bice said they do not wish to adjourn. Jennifer Vida said it is a beautiful design; the average height includes one storey cottages and they can't build to the average; this is a double lot and deserves special consideration. Committee Member Gracia Janes commented that contextual zoning is the main issue; along this street there are differing types of houses and the intent of the Zoning By-Law is not to overwhelm existing homes.

DECISION: *REFUSED*

REASONS: Urban design considerations should not outweigh the Zoning By-Law contextual zoning intent to preserve the character of established neighbourhoods by regulating the height and bulk of new buildings to ensure buildings are consistent with existing neighbourhood character. The Applicant's Agent advised they would be willing to reduce the height variance request by 1 metre but it is inappropriate for the Committee to address an amendment to the Application that still requires a variance and the Committee would prefer to deal with the Application as submitted or an adjournment to permit amendments to be made and the Application resubmitted. Contextual zoning is the main issue; along this street there are differing types of houses and the intent of the Zoning By-Law height regulation is that new construction is not to overwhelm existing homes, i.e. the proposed house would be taller than most of the houses along the block face, including several 1 storey bungalows / cottages. Therefore this Application does not meet all four Planning Act tests for a minor variance; the variance is not minor in nature from the provisions of the Zoning By-Law and is not appropriate for the development of the land and the general intent and purpose of the Zoning By-Law and the Official Plan is not maintained.

Committee Chair Michael Welsh summarized reasons for the decision.

Committee Member John Bice did not take part in the discussion or vote on this matter.

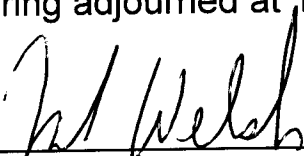
BUSINESS:

NEW BUSINESS:

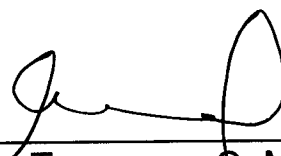
ADJOURNMENT:

Moved by Ray Guy, seconded by Hilda McCann, that this Public Hearing be adjourned. APPROVED.

The hearing adjourned at 11:15 p.m.



CHAIR, Michael Welsh



Secretary-Treasurer, C. Macdonald



COMMITTEE OF ADJUSTMENT PUBLIC HEARING AGENDA

Thursday August 18, 2011

7:30 p.m.

Location: Council Chambers
Town of Niagara-on-the-Lake Administration Building
1593 Four Mile Creek Road, Niagara-on-the-Lake, Ontario

CALL TO ORDER:

MINUTES:

1. Committee of Adjustment Hearing, July 21, 2011

NEXT COMMITTEE OF ADJUSTMENT HEARING DATE:

1. September 15, 2011

CONFLICT OF INTEREST:

CONFIRMATION OF APPLICATION NOTICE:

REQUEST FOR WITHDRAWAL OR ADJOURNMENT:

APPLICATIONS:

1. 644 Concession 1 Road, Consent Application B-13/11
2. 200 Four Mile Creek Road, Consent Application B-14/11
3. 86 Gage Street
Consent & Minor Variance Applications B-15/11 & A-27/11

4. 370 Gate Street
Consent & Minor Variance Applications B-16-17/11 & A-28-29/11
5. 538 Niagara Boulevard, Minor Variance Application A-30/11
6. 188 Front Street North, Minor Variance Application A-31/11
7. 16 Wilberforce Avenue, Minor Variance Application A-32/11

BUSINESS:

NEW BUSINESS:

ADJOURNMENT: