

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: April 9, 2025

CASE NO(S): OLT-24-000900

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Rainer Hummel
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	To permit a rezoning and severance of a residential lot for a proposed single-detached dwelling.
Reference Number:	ZBA-05-2024
Property Address:	187 Queen Street
Municipality/UT:	Niagara-on-the-Lake/Niagara
OLT Case No.:	OLT-24-000900
OLT Lead Case No.:	OLT-24-000900
OLT Case Name:	Hummel v. Niagara-on-the-Lake (Town)

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Rainer Hummel
Subject:	Consent
Description:	To permit a rezoning and severance of a residential lot for a proposed single-detached dwelling.
Reference Number:	B-09/24
Property Address:	187 Queen Street
Municipality/UT:	Niagara-on-the-Lake/Niagara
OLT Case No.:	OLT-24-000919
OLT Case Name:	Hummel v. Niagara-on-the-Lake (Town)

Heard: January 21, 2025 by Video Hearing

APPEARANCES:**Parties****Counsel**

Rainer Hummel
("Appellant / Applicant")

Sara Premi

Town of Niagara-on-the-Lake
("Approval authority/Town")

Callum Shedden

MEMORANDUM OF ORAL DECISION DELIVERED BY L.P. YOU ON JANUARY 21, 2025 AND ORDER OF THE TRIBUNAL

[1] This appeal arises under ss. 34(11) and 53(19) of the *Planning Act*, R. S. O. 1990, c. P. 13, as amended, by the Appellant, with respect to the Zoning By-law Amendment ("ZBA") and Consent applications ("Applications") to permit a rezoning and severance of a residential lot for a proposed single-detached dwelling on the lands municipally known as 187 Queen Street ("Subject Lands"). The Applications were refused by the Town Council and Committee of Adjustment, respectively.

[2] The Hearing was originally scheduled as a Merit Hearing. Upon the updates from the Parties that a settlement has been reached in principle, the Hearing is converted into a Hearing to discuss the planning instruments in the settlement.

CONTEXT

[3] The Subject Lands have an area of approximately 0.66 acres and 42.6 meters of frontage and are located in the urban area of the Town. The Subject Lands contain one existing two-storey single-detached dwelling and accessory structures, which are designated under Part IV of the *Ontario Heritage Act* ("OHA") through the Town's By-Law 3633.02 (Town Bylaw).

[4] The Subject Lands are designated as Established Residential and Build-up Area in the Town Official Plan, 2017 Consolidation, as amended ("Town OP") and are zoned Old

Town Community Zoning District-Established Residential (ER) zone in the Town's Comprehensive Zoning By-Law 4316-09, as amended.

[5] The Appellant sought to re-zone the Subject Lands to "Old Town Community Zoning District-Established Residential (ER) Site-Specific" zone to recognize site-specific provisions for lot frontage, lot depth, building setbacks and rear yard encroachment. In addition, the Appellant sought to sever the Subject Lands and further to create a total of two lots.

[6] Disposition of the matter has come before the Tribunal as a settlement proffered by the Parties. The original Applications contemplated the creation of two lots, and the proposed settlement revised the Application by eliminating one lot and creating one additional lot, which results in the creation of total two lots. The proposed settlement provides site-specific ER zone provisions of the two lots as detailed as follows:

Lot 1 (Site-Specific ER Zone)-new vacant lot

Zone requirement	ER Zone	Site-specific ER Zone
Minimum lot frontage	As existing	33.0 meters
Minimum lot depth		42.0 meters
Minimum front yard setback	7.5 meters	8.5 meters
Maximum encroachment into a required rear yard for an unenclosed and	1.5 meters only for unenclosed and uncovered	3.5 meters

uncovered/covered porch, deck, balcony, patio or steps		
A detached or attached garage shall be setback a minimum of 1.0 meter behind the main façade of the dwelling on the ground floor		
The door(s) of an attached garage shall not occupy more than 50% of the width of the dwelling facade		

Lot 2 (Site-Specific ER Zone)-lot with existing dwelling and proposed addition

Zone requirement	ER Zone	Site-specific ER Zone
Minimum lot frontage	As existing	29.0 meters
Minimum lot depth		42.0 meters
Minimum front yard setback	7.5 meters	As existing on the date of passage of this by-law (13.9 meters)
Minimum rear yard setback	7.5 meters	5.0 meters

Minimum exterior side yard setback	4.5 meters	As existing on the date of passage of this by-law to the front face of the dwelling (0.0 meters) 12.0 meters to the front face of an attached garage
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EXHIBITS

[7] The Tribunal confirms that it has received, reviewed, and considered the following materials and submissions:

1. The Parties' oral and written submissions in support of the settlement;
2. Joint Book of Documents marked as Exhibit 1; and,
3. Booklet of Policy Documents marked as Exhibit 2.

REQUEST FOR STATUS

[8] The Tribunal received no oral nor written request for Party and Participant Status prior to and at the Hearing.

NOTICE OF HEARING

[9] There is no issue with service of the Notice of this hearing.

FINDINGS AND ANALYSIS

[10] The Tribunal recognized Jennifer Vida, a registered Professional Planner and full member of the Canadian Institute of Planners and Ontario Professional Planners with over 21 years of professional land use planning experience, being qualified to assist the Tribunal with opinion evidence in the area of land use planning.

[11] In Ms. Vida's oral and written evidence, she indicated that a professional arborist had been retained for tree protection and a tree protection plan by a certified arborist had been submitted to and approved by Town staff. Ms. Vida further confirmed that mitigation measures would be secured in a future development agreement to be registered on title and would be secured in the minutes of settlement, which is contained in Exhibit 1.

[12] The Tribunal recognized Marcus Letourneau, a registered Professional Planner, full member of the Canadian Institute of Planners and Ontario Professional Planners, professional member of Canadian Association of Heritage Professional, who received Certified Institutional Protection Manager designation, being qualified to provide opinion evidence in the area of heritage consultation planning for the matter before the Tribunal.

[13] Mr. Letourneau held the opinion that only the main residential building itself is designated under OHA through the Town Bylaw and the streetscape, garden and vegetation were not considered as key features of heritage attributes when the Town Bylaw was approved.

[14] Mr. Letourneau indicated that the approval conditions related to heritage matters in the planning staff report were appropriate from cultural heritage perspective and would serve to conserve cultural heritage resources.

[15] The Tribunal recognized Aimee Alderman, a registered Professional Planner, full member of the Canadian Institute of Planners and Ontario Professional Planners, with extensive knowledge of and professional experience in land use planning area, being

qualified to provide opinion evidence concerning the land use planning in this matter before the Tribunal.

[16] Ms. Alderman confirmed that Town staff's position remained the same as that in the planning staff report wherein it recommended approval of the Applications subject to the conditions.

[17] The Tribunal understands that the aforementioned sworn evidence of expert witnesses reflects revisions to the Applications before the Tribunal that were reached through the cooperative efforts of the Parties. The settlement proposal provides resolution to ensure the two key issues - heritage conservation and tree protection, were addressed appropriately. The Parties jointly requested that the Tribunal approve the Applications in accordance with the staff reports, recommendations, and conditions. The Tribunal finds the resolution is appropriate and acceptable.

[18] The Tribunal accepts the uncontested opinion evidence of the three expert witnesses, as presented in their statements and oral testimonies, and finds that the settlement proposal:

- has regard to the relevant matters of provincial interest found in s. 2 of the *Planning Act*, R. S. O. 1990, c. P. 13, as amended ("Act");
- is consistent with the Provincial Planning Statement, 2024,
- conforms to Niagara Region Official Plan and Town OP;
- meets the applicable tests set out in s. 51(24) of the Act;
- reflects principles of good land use planning; and,
- represents public interest.

ORDER**[19] THE TRIBUNAL ORDERS THAT:**

1. The appeal pursuant to s. 34(11) of the *Planning Act* is allowed in part and Town Zoning By-law No. 4316-09 is hereby amended as set out in **Attachment 1** to this Order. The Tribunal authorizes the municipal clerk of the Town of Niagara-on-the-Lake to assign a number to this by-law for record keeping purposes; and,
2. The appeal pursuant to s. 53(19) of the *Planning Act* is allowed and provisional consent is to be given subject to the conditions set out in **Attachment 2** to this order.

“L.P. You”

L.P. YOU
MEMBER

Ontario Land Tribunal

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

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 4316FR-24**

187 Queen Street, Roll #: 262701000404100

A BY-LAW TO AMEND BY-LAW NO. 4316-09, AS AMENDED, ENTITLED
A BY-LAW TO REGULATE THE USE OF LANDS AND THE ERECTION,
USE, BULK, HEIGHT, LOCATION, AND SPACING OF BUILDINGS AND
STRUCTURES WITHIN THE TOWN OF NIAGARA-ON-THE-LAKE.

WHEREAS the Town of Niagara-on-the-Lake Council is empowered to enact this By-law by virtue of the provisions of Section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended;

AND WHEREAS this By-law conforms to the Town of Niagara-on-the-Lake Official Plan.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE enacts as follows:

1. Schedule "A-1" of By-law 4316-09, as amended, is further amended by changing the zoning of the subject lands identified on Map 'A' attached to and forming part of this By-law from "Old Town Community Zoning District – Established Residential (ER) Zone" to "Old Town Community Zoning District – Established Residential [ER-114(a)] Site-Specific Zone" and "Old Town Community Zoning District – Established Residential [ER-114(b)] Site-Specific Zone".
2. That Subsection 7.14 Site Specific Exceptions of By-law 4316-09, as amended, is hereby further amended by adding the following section:

7.14.114 – 187 Queen Street – See Schedule 'A-1' [ER-114(a) and ER-114(b)]**7.14.114.1 ER-114 (a) Zone Requirements**

In lieu of and in addition to the corresponding provisions of Subsection 7.1.2, the following provisions shall apply to the subject lands identified as ER-114 (a) on Schedule 'A-1':

(a)	Minimum lot frontage Minimum lot depth	33 m 42 m
(b)	Minimum front yard setback	8.5 m
(k)	Maximum encroachment into a required rear yard for an unenclosed and uncovered/covered porch, deck, balcony, patio or steps	3.5 m
(l)	A detached or attached garage shall be setback a minimum of 1 metre behind the main façade of the dwelling on the ground floor	
(m)	The door(s) of an attached garage shall not occupy more than 50% of the width of the dwelling façade	

7.14.114.2 ER-114 (b) Zone Requirements

In lieu of and in addition to the corresponding provisions of Subsection 7.1.2, the following provisions shall apply to the subject lands identified as ER-114 (b) on Schedule 'A-1':

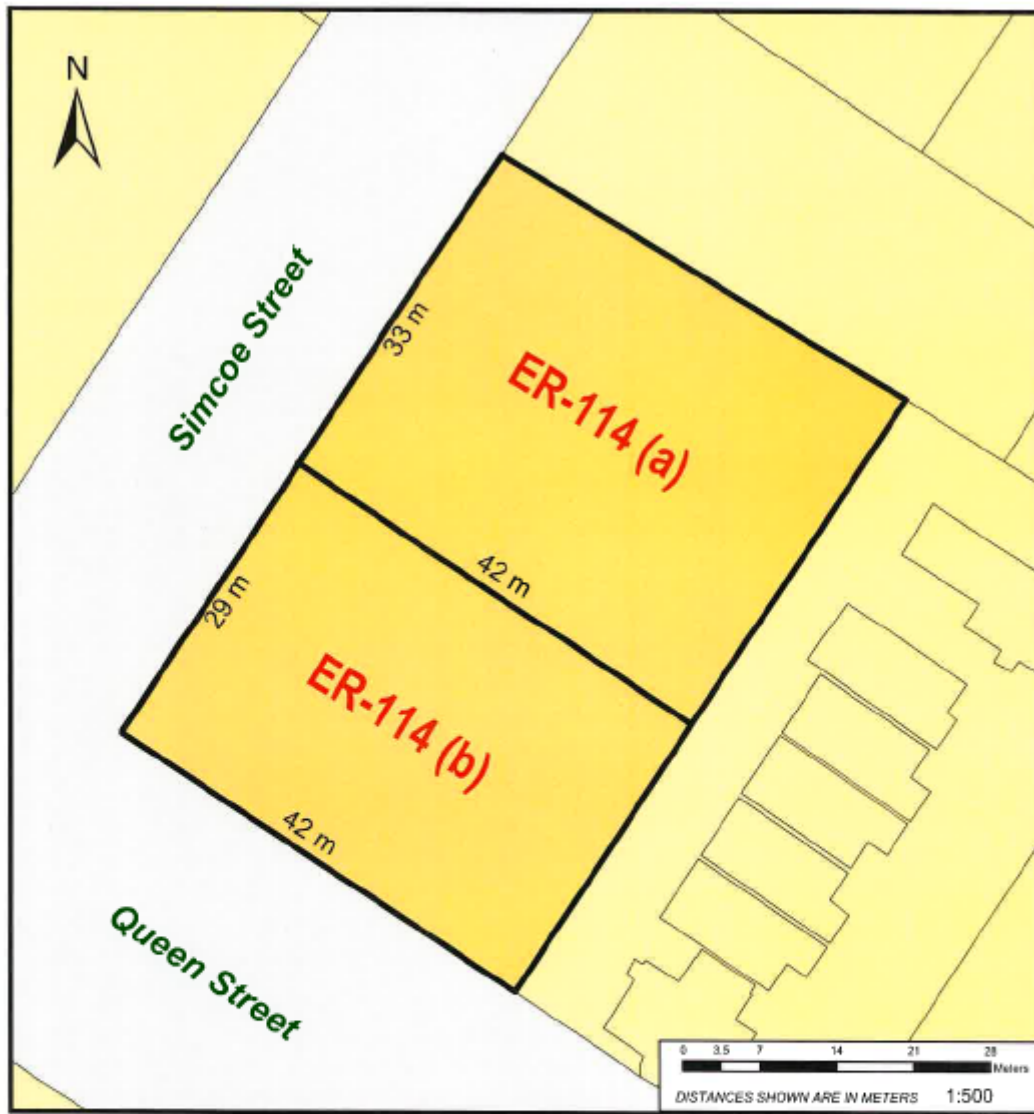
(a)	Minimum lot frontage Minimum lot depth	29 m 42 m
(b)	Minimum front yard setback	As existing on the date of passage of this by-law
(c)	Minimum rear yard setback	5 m
(i)	Minimum exterior side yard setback to the front face of the dwelling	As existing on the date of passage of this by-law
	Minimum exterior side yard setback to the front face of an attached garage	12 m

3. All other provisions of Zoning By-law 4316-09, as amended, shall continue to apply to the subject lands.
4. That the effective date of this By-law shall be the date of final passage thereof.

READ A FIRST, SECOND AND THIRD TIME THIS 30TH DAY OF JULY, 2024.

LORD MAYOR GARY ZALEPA

TOWN CLERK GRANT BIVOL



MAP 'A' ATTACHED TO BY-LAW 4316FR-24, BEING AN AMENDMENT TO SCHEDULE "A-1" OF ZONING BY-LAW 4316-09, AS AMENDED, OF THE TOWN OF NIAGARA-ON-THE-LAKE AS PASSED ON THIS 30th DAY OF JULY, 2024.

LORD MAYOR
GARY ZALEPA

TOWN CLERK
GRANT BIVOL

ATTACHMENT 2



Town of Niagara-on-the-Lake

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REPORT #: CDS-24-141 **COMMITTEE DATE:** 2024-08-15
REPORT TO: Committee of Adjustment **DUE IN COUNCIL:** N/A
SUBJECT: Consent Application B-09/24 – 187 Queen Street

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Consent Application B-09/24 for 187 Queen Street be approved, subject to the following conditions:
 - 1.1.1 That the owner/applicant provides a legal description of Part 1, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Director of Community and Development Services, for use in the issuance of the Certificate of Consent;
 - 1.1.2 That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Director of Community and Development Services, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 1, has been carried out, the documentation to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first;
 - 1.1.3 That the owner/applicant, at their own expense, obtains and submits an appraisal for the purposes of payment of cash-in-lieu of parkland dedication, by a qualified appraiser, which is to be based on the fair market value of Part 1 using the direct comparison approach, to the satisfaction of the Manager of Finance; and that the owner/applicant pays to the Town a cash-in-lieu of parkland dedication, which shall be 5% of the appraised value of Part 1;
 - 1.1.4 That the owner/applicant enter into a Development Agreement with the Town, and that such Development Agreement will be registered on the title of Part 1, to the satisfaction of the Director of Community and Development Services, in which the owner/applicant shall agree:
 - a) That Urban Design Committee review is required prior to issuance of a Building Permit for any new dwelling built on Part 1, and that any construction shall be in keeping with the heritage character of the surrounding area, consistent with the Town's Official Plan and urban

design guidelines and associated review by the Urban Design Committee, to the satisfaction of the Director of Community and Development Services;

- b) That, prior to the issuance of a Building Permit for a new dwelling, the owner/applicant submit a Heritage Impact Assessment to evaluate impacts to the adjacent heritage resources, determine compatibility of the new development within its historic context, and provide recommendations for mitigation and conservation measures, to the satisfaction of the Director of Community and Development Services;
 - c) That a water service wholly fronting Part 1 of the proposed severance be installed via an application to the Town's Environmental Services Department;
 - d) That the owner/applicant provides a lot grading plan for Part 1, completed by an Ontario Land Surveyor or Civil Engineer, and include existing grades on adjacent properties, to the satisfaction of the Chief Building Official;
 - e) That the owner/applicant submits an application to facilitate the removal of trees, in accordance with the Town's Tree By-laws and to the satisfaction of the Town's Urban Forestry Officer;
 - f) That the owner/applicant implements the recommendations of the Tree Inventory and Preservation Plan, prepared by Jackson Arboriculture Inc., dated January 25, 2024, to the satisfaction of the Director of Community and Development Services and in consultation with the Town's Urban Forestry Officer;
 - g) That the owner/applicant provides a signed copy of the Town's Tree Protection Declaration form, to the satisfaction of the Town's Urban Forestry Officer; and
 - h) Any agreements of Purchase and Sale or Lease of Part 1, which may be negotiated, shall contain a clause notifying the purchaser of the Development Agreement and the requirement to comply with the Development Agreement.
- 1.1.5 That the owner/applicant enter into a Development Agreement with the Town, and that such Development Agreement will be registered on the title of Part 2, to the satisfaction of the Director of Community and Development Services, in which the owner/applicant shall agree:
- a) That the owner acquires a heritage permit, through the Town's Municipal Heritage Committee, for any proposed alterations to the Part IV designated dwelling on Part 2 (187 Queen Street), to the satisfaction of

the Director of Community and Development Services;

- b) That the owner submits an application to facilitate the removal of trees, in accordance with the Town's Tree By-laws and to the satisfaction of the Town's Urban Forestry Officer;
 - c) That the owner implements the recommendations of the Tree Inventory and Preservation Plan, prepared by Jackson Arboriculture Inc., dated January 25, 2024, to the satisfaction of the Director of Community and Development Services and in consultation with the Town's Urban Forestry Officer;
 - d) That the owner/applicant provides a signed copy of the Town's Tree Protection Declaration form, to the satisfaction of the Town's Urban Forestry Officer; and
 - e) Any agreements of Purchase and Sale or Lease of Part 2, which may be negotiated, shall contain a clause notifying the purchaser of the Development Agreement and the requirement to comply with the Development Agreement.
- 1.1.6 That the owner/applicant receives final approval for a Zoning By-law Amendment that contains provisions required to facilitate the proposal;
- 1.1.7 That the owner/applicant modifies Designation By-law 3633-02, in accordance with all requirements of the *Ontario Heritage Act*, to remove Part 1 from the "real property" legal description, to the satisfaction of the Director of Community & Development Services;
- 1.1.8 That the owner/applicant obtains any required building permit for the removal/demolition of the existing detached garage on Part 1, and that final inspection and closure of the permit is completed to the satisfaction of the Chief Building Official;
- 1.1.9 That the Town Operations Department be provided with a copy of the deposited reference plan;
- 1.1.10 That the owner/applicant identifies, disconnects and caps any existing internal water and sanitary sewer connections between Parts 1 and 2 of the proposed severance to a minimum of 2 metres from the boundary line between Parts 1 and 2, to the satisfaction of the Director of Operations;
- 1.1.11 That the owner/applicant is required to:
- a) Disconnect the existing storm sewer lateral currently traversing Part 1 between Part 2 and the Simcoe Street storm sewer and cap it at the boundary between Parts 1 and 2. Storm water is temporarily discharged

to the ground on Part 2 as per Town policy; and

- b) Enter into a servicing agreement with the Town, to be registered on title of the property, for the extension of the existing 375 mm storm main on Simcoe Street to a point a minimum of 3 metres south of the northern boundary of Part 2 including the installation of a storm lateral connecting to the storm main service, to the satisfaction of the Director of Operations.
- 1.1.12 That the Owner/applicant must obtain approval in the form of a municipal entrance permit from the Town's Operations Department for a new driveway on Part 2, including location/renewal/replacement of any boulevard trees or public infrastructure. Any costs associated with relocation of municipal parking stalls, parking meters or other requirements to facilitate the entrance will be at the Owner's expense; and
- 1.1.13 That the owner/applicant enter into an encroachment agreement with the Town for the building encroachment located on the Queen Street frontage of Part 2, to be registered on the title of Part 2 of the proposed severance, to the satisfaction of the Town.