

Please accept this message as the Covering Letter for an Application to change one Condition of the Committee of Adjustment decision approving the proposed application for Consent (Boundary Adjustment), Town File No. B-13/24 dated November 22, 2024 to delete Condition No. 1.1.5. The completed application form and the fee of \$1270.00 will be filed concurrently with the Town.

Town of Niagara-on-the-Lake,
Department of Community & Development Services,
Committee of Adjustment,
1593 Four Mile Creek Road,
P.O. Box 100, Virgil, ON L0S 1T0

Attention : Ms. Natalie Thomson,
Secretary Treasurer

Dear. Ms. Thomson,

Covering Letter for APPLICATION TO CHANGE CONDITION OF CONSENT , approved with conditions on November 22, 2024 . Fille No. B-13/24
REQUEST TO DELETE CONDITION No. 1.1.5

As you know, my partner and I, John Holdom, are the owners of the property at 485 Butler Street. The property at 477 Butler Street is owned by Ms. Betty Disero. In between these two properties is 479 Butler Street, which is the subject of this Consent application. This property is currently owned by myself, Patrick Devine and 2127169 Ontario. Inc, (Ms. Disero's company) as Tenants in Common.

479 Butler Street was purchased by the current owners on January 17, 2020. As I advised the Committee at the public hearing on November, 21, 2024, it has always been the intention of the owners to divide 479 Butler in half, with one half merged with 485 Butler Street and the other half merged with 477 Butler Street. However, under the provisions of the Planning Act, the severance of the property into two parts requires the Consent of the Committee of Adjustment.

As everyone knows, the events of 2020 and the Covid pandemic disrupted "business as usual". When it was purchased, there was a small, unoccupied building previously used for residential purposes. It's size was 12 feet by 20 feet and looked like it had once been used as a one-car garage.

Since the intention of the new owners was not to retain this structure, and being unoccupied, the structure was increasingly being inhabited by raccoons, etc. the decision was made to demolish the structure. To that end, Sacco Construction was retained, a demolition permit was obtained from the Town and the structure was demolished in June, 2020. Because of the restraints on normal municipal activities (and the owners having other matters to attend to) the matter of

applying to the Committee of Adjustment for a Consent was put on hold. Accordingly, no further action was taken with respect to the property until early in 2024. The Town's planning staff was consulted, the required Pre-Consultation meeting was held with all interested parties and Town departments, and the Pre-Consultation Agreement was executed on August 1, 2024. Based upon the Sketch Plan prepared by the surveyor showing the four Parts, the application and supporting fee was filed with the Town.

It should be noted that the effect of implementing this Consent will not result in any physical change to the property. It will look exactly the same as it does today. The only change is that the common ownership of the two owners over the entire property (i.e. as Tenants in Common) will result in ownership being split, such that the northerly half of the property will be severed and merged with the property immediately to the north and the southerly half will be merged with the property immediately to the south. As noted by Planning Staff, it is a "boundary adjustment".

The hearing before the Committee of Adjustment was held on November 21, 2024. Other than myself, there were no other interested parties. After I responded to some questions from the Committee, the application was approved, subject to what we understood to be the standard conditions. When the appeal period expired on December 12, 2024, we began the process of fulfilling the conditions.

These included such things as re-engaging the surveyor to prepare a registerable Reference Plan based upon the Sketch Survey previously provided to and endorsed by the Committee. Also, our lawyer was retained to undertake all the necessary legal work dealing with all conditions of a legal nature. (in this case, there was the additional legal work related to the merging of the various parcels.) By mid-March 2025, all conditions had been fulfilled, except for Condition 1.1.5 which reads :

That existing servicing laterals connecting 479 Butler (Part 2 and Part 3) be identified, disconnected and capped at the main,
with any necessary Permit Approvals completed to the satisfaction of the Town's Environmental Services Division.

What appeared to be a technical condition that could be easily addressed, turned out not to be the case. The following is a summary of our actions taken to date and why we believe Condition 1.1.5 should be deleted :

1. Throughout the months of February and March, 2025, we endeavored to retain a firm which could do the work necessary as set out in the Condition.

To our surprise, most of the firms declined to provide us with a quote to do the necessary work to fulfill the condition. The reason repeatedly given was that the cost to do the work required by the condition, as worded, would be too prohibitive for a very small project like this. The difficulty related to fulfilling the words regarding being "capped at the main". Attached please find a copy of a plan prepared by Town staff entitled "479 Butler St. San Lateral Connection to Sewer Main". It shows, on the left, the property at 479 Butler Street, Butler Street and the east

side of the Street, on the right, and also specifically identifies the "main" as NOTLSANMH-0706. You will note that the main is located on the opposite side of the street, in front of the home of our neighbours, Steve and Shena Scordas either in their front yard or in the middle of their driveway. Therefore, based upon this information provided by the Town, in order to fulfill the condition, it would be necessary to close Butler Street, for work to be done as well as digging up the main in front of our neighbour's home;

2, Finally, we were able to have Cotton Construction provide us with a quote as to what this would cost. Attached please find a copy of the Proposal from Cotton Construction dated March 25, 2025 detailing the cost of what the Town was requiring in order to satisfy the Condition. You will note that the estimated cost is \$39,550.00;

3. On March 27, 2025, I wrote to you, enclosing the Cotton Construction Proposal and asking if the Town's Operations division would re-consider changing its Condition in light of this information. You advised me that you had spoken with Mr. Wills, after providing him with a copy of the Cotton Construction Proposal. You advised me that Mr. Wills was not prepared to make any changes;

4. On April 9, 2025, I wrote to you, copying Mr. Wills and Mr. MacIsaac setting out my detailed submissions as to why I believed that this Condition should be deleted. Notwithstanding this further submission, Mr. Wills was not prepared to change his position;

5. On April 15, 2025, a meeting was held at the Town offices with yourself and Mr. Connor MacIsaac of the Planning Department. At that meeting, Mr. MacIsaac advised that the Town did indeed have an open buildings department file relating to the 2020 demolition of the small house. However, there was nothing in the file confirming that the demolition had been completed or what the status was as to capping of the services. With respect to the water and hydro service, we had provided the Town with a copy of the confirmation from Niagara-on-the-Lake Hydro that the water and hydro services had been disconnected and capped at the property line as of May, 2020. However, there was no confirmation of the status of capping the sanitary sewer lateral. In this regard, we were shown the Plan prepared by Town engineering staff entitled "479 Butler St. San Lateral Connection to Sewer Main" (It is assumed that that the letters "SAN" is an abbreviation of the word "Sanitary".) I obtained a copy of that Plan subsequent to the meeting and it is the first attachment to this submission;

6. In light of the lack of information about the sanitary sewer lateral, we agreed that it would be necessary to follow up with Sacco Construction (the company that conducted the demolition) to see whether they had an record of this. It was determined that the lateral had been capped at the location of the toilet in the former small house. Therefore, in order to confirm the exact status of the sanitary sewer lateral, it was necessary for us to retain them to do excavation (digging) work on the property. The results of the excavation work proved helpful and we were billed \$2486.00, which we have paid;

7. In a detailed submission to the Town on June 11, 2025 (copies of which were provided to Mr. Wills and Mr. MacKenzie), it was determined excavation was needed to determine the comparative locations of the water, hydro and sanitary sewer laterals. To do this, it was

necessary to dig a trench of 7 to 10 feet deep across the front of where the small house had been located. Sacco Construction was able to confirm and document by means of photos that unlike the water and hydro laterals which went to Butler Street, the sanitary sewer lateral did not go to the street. Rather it ran roughly parallel to the road, under a large tree and onto my property at 485 Butler Street. Copies of the detailed email and attached photos, as confirmed by Mr. MacIsaac, are enclosed;

8. Having determined that the sanitary sewer lateral had not been capped at the property line, Sacco Construction proceeded to do this. The Town building inspector was called and he attended at the site and verified that the sanitary sewer lateral had been properly capped at the property line. He indicated that he would report this to the relevant Town officials;

9. Based upon what is shown in the photos enclosed, it is clear that the lateral does not go to Butler Street (to the east) , but rather it goes to the south and onto the 485 Butler Street property. Indeed, one of the photos clearly shows that the sanitary sewer lateral (in black) crossing underneath the water and hydro lines, in a perpendicular direction;

10. In view of the fact that all evidence pointed to the sanitary sewer lateral not being connected to the main, it would be impossible to disconnect or cap it at the main;

11. But the larger question is why this condition was needed in the first place. Notwithstanding the fact that detailed submissions, including photos, were sent to Mr. Wills on March 27, 2025, April 22, 2025, June 11, 2025 and June 23, 2025, no response was received. This then raises the question of why Condition 1.1.5 is needed at all;

12. Having practiced municipal, planning and development law across Ontario for 45 years until my retirement on December 31, 2023., I am very familiar with the law relating to how to evaluate the validity of a condition. From my direct experience at many Ontario Municipal Board (now Ontario Land Tribunal) hearings, the cases have consistently used the following test : "Is the condition reasonably related to the permission being given ?"

13. As has been demonstrated by the actions of certain Town staff, the answer to that question is clearly "no". The exorbitant cost and many hours of time required to be expended by ourselves, the applicants, demonstrate that. Any reasonable person would see no relationship between the permission for a change in ownership status (from tenants in common to separate ownership, to be merged with the adjacent properties) and the extremely onerous demands made by the implementation of this condition. For these reasons, we will be requesting that the Committee of Adjustment delete Condition No. 1.1.5.

REQUEST :

The Committee of Adjustment is requested to review and change Condition No. 1.1.5, so as to delete it. The information and facts relating to the implementation of this Condition (as shown in this submission) lead to the inevitable conclusion that this Condition should be deleted.

Your very truly,

Patrick Devine

A handwritten signature in black ink that reads "Patrick Devine". The script is fluid and cursive, with the first letters of each word being capitalized and slightly larger than the rest of the letters.