



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 22-06

BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO A SPATIAL SEPARATION AGREEMENT WITH THE OWNERS OF 633 NIAGARA BOULEVARD AND 4 DUFFERIN STREET

WHEREAS Section 8 of the *Municipal Act, 2001* provides a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under that or any other *Act*, and

WHEREAS Section 9(1) of the *Municipal Act, 2001* provides that Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable them to govern their affairs as they consider appropriate and (b) to enhance their ability to respond to municipal issues.

WHEREAS Section 9(2) of the *Municipal Act, 2001* provides that in the event of ambiguity in whether or not a municipality has the authority to pass a by-law under sections 8 and 11, the ambiguity shall be resolved as to include, rather than exclude, municipal powers that existed on December 31, 2002, and

WHEREAS Section 9(3) of the *Municipal Act, 2001* provides without limiting the generality of subsections (1) and (2), a by-law under section 11 respecting a matter may (a) regulate or prohibit respecting the matter; and (b) as part of the power to regulate or prohibit respecting the matter, require persons to do things respecting the matter, provide for a system of licences, permits, approvals or registrations respecting the matter and impose conditions as a requirement of obtaining, continuing to hold or renewing a licence, permit, approval or registration, and

WHEREAS Subsection 11(2)1 of the *Municipal Act, 2001* provides for spheres of jurisdiction and under the Table thereafter it states that a lower-tier municipality and an upper-tier municipality may pass by-laws respecting structures, including fences and signs, and

WHEREAS Karl Deiter Weinmann and Constance Weinmann, as the current Owners of 633 Niagara Boulevard, have made an Application to the Committee of Adjustment to sever their property, thereby creating a situation where a building on the severed parcel will not meet the requirements of the Ontario Building Code, and

WHEREAS Karl Deiter Weinmann and Constance Weinmann have requested the Corporation of the Town of Fort Erie to permit the non-compliance with the Ontario Building Code by entering into a Spatial Separation Agreement as provided for under the Ontario Building Code, and

WHEREAS Janet Monchalin and Norman Monchalin (the intended Owners) intend to purchase part of the lands of Karl Deiter Weinmann and Constance Weinmann (the current Owners), as described in Schedule "A" annexed hereto, and which part contains the aforesaid building and is subject to Committee of Adjustment Decision File No. B05/06 F.E., and

WHEREAS the intended Owners and the current Owners are hereinafter referred to as "the registered Owners", as the case may be, and

WHEREAS 487788 Ontario Ltd. is the owner of 4 Dufferin Street, being the abutting land immediately to the west affected by the spatial separation agreement contemplated herein, and

WHEREAS Report No. CS-07-06 was approved at the Council-in-Committee meeting of February 20, 2006 authorizing the entry into a Spatial Separation Agreement with Janet and Norman Monchalín and 487788 Ontario Ltd. to permit the non-compliance of a one (1) storey garage situated at 633 Niagara Boulevard, in order to meet the requirements of the Ontario Building Code, and

WHEREAS it is deemed desirable to permit the aforesaid non-compliance with the Ontario Building Code, until such time as the building shall have been demolished, removed or destroyed by fire or otherwise, subject to the entry into a Spatial Separation Agreement in the form of Schedule "A" annexed hereto, and

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** subject to the registered Owners being responsible for all costs associated with the preparation and registration of the spatial separation agreement, authority be and it is hereby granted for the entry into an agreement in the form of Schedule "A" hereto annexed.
2. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the agreement annexed hereto to this by-law as Schedule "A" and any other documents necessary to implement the intent of this by-law and to affix the corporate seal thereto.
3. **THAT** upon passage of this by-law the executed agreement shall be duly registered in the local Land Registry Office.
4. **THAT** after passage of this by-law, the Clerk shall complete the legal descriptions of the lands in Schedule "A" annexed hereto, upon receipt of the deposited Reference Plan describing same.
5. **THAT** in the event the transaction is not completed with Janet and Norman Monchalín, authority is hereby granted to enter into the spatial separation agreement with Karl Deiter Weinmann and Constance Weinmann or such new intended Owner, subject to the registered Owners being responsible for all costs associated with the preparation and registration of same.
6. **THAT** pursuant to the provisions of Section 227 of the *Municipal Act, 2001* the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections to the by-law and Schedules of a descriptive, administrative, numerical or grammatical nature as may be deemed necessary after passage of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 20th DAY OF FEBRUARY, 2006.


MAYOR


CLERK

I, Carolyn J. Kett, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 22-06 of the said Town. Given under my hand and the seal of the said Corporation this _____ day of _____, 20__.

SCHEDULE "A" TO BY-LAW NO. 22-06

SPATIAL SEPARATION AGREEMENT

THIS AGREEMENT made this 15th day of March, 2006
under Section 9.10.14.12 of the Building Code (Ontario Regulation 403/97), as amended,
Building Code Act, 1992

BETWEEN:

THE CORPORATION OF THE TOWN OF FORT ERIE
hereinafter referred to as the "Town" of the **FIRST PART**

and

JANET MONCHALIN AND NORMAN MONCHALIN
hereinafter referred to as "Monchalin" of the **SECOND PART**

and

487788 ONTARIO LTD.
hereinafter referred to as "487788" of the **THIRD PART**

WHEREAS Janet Monchalin and Norman Monchalin are the registered owners of certain lands and premises described as Part of Lot 4 West Side of Niagara Street, Plan 348, Bertie, designated as Part 3 on Reference Plan 59R- 13027, in the Town of Fort Erie, in the Regional Municipality of Niagara, being part of PIN 64232-0142 (LT), known municipally as 633 Niagara Boulevard (hereinafter referred to as "Monchalin's Lands"), and

WHEREAS 487788 Ontario Ltd. is the registered owner of certain lands described as Part of Lots 3 and 4 West Side of Niagara Street, Plan 348, Bertie, as in RO697899, being all of PIN 64232-0140 (LT) and Part of Lot 4 West Side of Niagara Street, Plan 348, Bertie, designated as Part 2 on Reference Plan 59R- 13027, being part of PIN 64232-0142 (LT), in the Town of Fort Erie, in the Regional Municipality of Niagara, known municipally as 4 and 10 Dufferin Street (hereinafter referred to as "487788's Lands"), immediately to the west and adjacent to Monchalin's Lands, and

WHEREAS The Corporation of the Town of Fort Erie (hereinafter referred to as "the Town") is entering into this Agreement in its capacity as the municipality required to enforce the provisions of the Ontario Building Code, and

WHEREAS Section 9.10.14 of the Ontario Building Code provides for certain standards concerning the spatial separation and exposure protection of buildings, and

WHEREAS the west exposing building face of the existing one (1) storey garage constructed on the Monchalin's Lands does not meet the required limiting distance for an exposing building face under Section 9.10.14 of the Ontario Building Code, and

WHEREAS Section 9.10.14.12(5) of the Ontario Building Code provides that the limiting distance for an exposing building face is permitted to be measured to a point beyond the property line that is not the centre line of a street, lane or public thoroughfare, subject to certain criteria more particularly set out therein, and

WHEREAS 487788 owns 4 Dufferin Street designated as Part 2 on Reference Plan 59R-13027 lands immediately to the west of Monchalin's Lands, which have no buildings or structures thereon, and

WHEREAS Monchalin has requested the Town to permit the aforesaid non-compliance with the Building Code, and

WHEREAS the Town is prepared to permit the aforesaid non-compliance with the Ontario Building Code, subject to the Owner entering a spatial separation agreement with the Town, and complying with all other applicable laws including the Ontario Building Code, and

WHEREAS the agreement contemplated herein implements a method described in Section 9.10.14.12(5) of the Ontario Building Code for addressing the spatial separation and exposure protection of buildings, and the standard of safety set by the Ontario Building Code is not reduced by the implementation of this method;

NOW THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement and for other good and valuable consideration, the parties hereby covenant and agree as follows:

1. Definitions

(a) "*exposing building face*" means that part of the exterior wall of a building which faces one direction and is located between ground level and the ceiling of its top storey, or where a building is divided into fire compartments, the exterior wall of a fire compartment which faces one direction.

(b) "*limiting distance*" means the distance from an *exposing building face* to a property line, the centre line of a street, lane or public thoroughfare, or to an imaginary line between 2 buildings or fire compartments on the same property, measured at right angles to the *exposing building face*.

2. Spatial Separation

(a) Subject to the requirements of the *Building Code Act*, Regulations, and the Chief Building Official of the Town, and except as hereinafter set out, Monchalin is permitted to maintain the existing west exposing building face of the one storey garage situate on Monchalin's Lands, subject to Subsection (b), (c) and (d) below.

(b) Monchalin covenants and agrees that:

i) Upon the existing one (1) storey garage being demolished, removed or destroyed by fire or otherwise, the permission granted herein shall be terminated and that this Agreement shall be at an end.

(c) Monchalin further covenants and agrees that:

- i) Monchalin will comply with such other conditions as the Town considers necessary; and
- ii) Monchalin will maintain the said west exposing building face of the existing one (1) storey garage in good and proper repair and condition satisfactory to the Town's Chief Building Official; and
- iii) Monchalin will not increase, extend or enlarge or permit the increase, extension or enlargement of the said west exposing building face of the one (1) storey garage, in any manner whatsoever; and
- iv) if and when Monchalin, as a result of future reconstruction of the west exposing building face of the one (1) storey garage, complies with Section 9.10.14 of the Ontario Building Code, as amended from time to time, or such other Code in force within the Town of Fort Erie, this Agreement shall become null and void.

(d) 487788 covenants and agrees that:

- (i) 487788 will not construct a building on its property municipally described as 4 Dufferin Street, and designated as Part 2 on Reference Plan 59R- 13027 unless the limiting distance for exposing building faces in respect of the proposed construction is measured westerly a minimum distance of three (3.0) metres from the west exposing building face of the existing one (1) storey garage on Monchalin's Lands.

3. **General Provisions**

(a) Notwithstanding any provision in this Agreement to the contrary, Monchalin and 487788 hereby acknowledge that the Town is not obligated to issue any building permits or demolition permits or grant any other permits or consents with respect to any redevelopment of either Monchalin's Lands or 487788's Lands unless the party requesting such permit or consent has complied with all provisions of this Agreement and with all federal, provincial and municipal statutes, regulations, by-laws, ordinances, orders or requirements of other authorities having jurisdiction.

(b) Monchalin and 487788 hereby consent to the registration of this Agreement on the title to their Lands at their expense. In addition, this Agreement shall not be amended or deleted from title without the consent of the Town. Furthermore, Monchalin and 487788 shall provide the Town with the certificate of a duly qualified solicitor certifying that 487788's Lands are subject to the terms of this Agreement in priority to any other claims or encumbrances of any nature or kind prior to the release by the Town and the Committee of Adjustment of any conditions relating to severance approvals in Application B06/06 F.E. and Application B05/06 F.E.

(c) 487788 shall obtain the postponement to this Agreement of any and all encumbrances prior to and subsequent to its title.

(d) Monchalin and 487788, on behalf of themselves, their respective heirs, executors, administrators, successors and assigns, hereby release and forever discharge The Corporation of the Town of Fort Erie from, and agree that they shall at all times fully indemnify and save harmless the Town against, all actions causes of action, suits, claims and demands whatsoever by whomsoever made, which may be brought against or made upon the Town and from and against all losses, costs, damages, charges and expenses whatsoever which may be incurred, sustained or paid by the Town for or by reason of or on account of the permission hereby granted to Monchalin or 487788 or the exercise by Monchalin or 487788 of such permission, or anything and any matter relating thereto. Monchalin and 487788 hereby grant to the Town full power and authority to settle any such actions, suits, claims or demands on such terms as the Town may deem advisable. Monchalin and 487788 hereby covenant and agree with the Town to forthwith pay to the Town on demand all monies paid by the Town in pursuance of any such settlement and also such sum as shall represent the reasonable costs of the Town or its solicitors in defending or settling any such action, suits, claims or demands on a solicitor and own client basis.

(e) Monchalin and 487788 hereby further covenant and agree with the Town not to bring any action, suit, claim and demand whatsoever against the Town in connection with any provision of this Agreement.

(f) All notice, demands or request provided for or permitted to be given pursuant to this Agreement shall be made in writing as follows:

- (i) if made to the Town, shall be addressed to the Clerk, Town of Fort Erie;
- (ii) if made to Monchalin and 487788 and their respective encumbrancers, at their respective designated addresses for service shown on the Application to which this Agreement may be attached as registered in the Land Registry Office.

(g) Monchalin shall remit to the Town prior to the execution by the Town of this Agreement an administrative fee in the amount of \$500.00 for the Town's legal and administrative costs associated with the preparation and execution of this Agreement, and Monchalin and 487788 shall be responsible for their own legal costs and expenses, as well as all other costs related hereto in order to give effect to this Agreement.

(h) If a Court of competent jurisdiction should declare any clause or part of a clause of this Agreement to be invalid or unenforceable, such clause or part of a clause shall not be construed as being an integral part of this Agreement or having persuaded or influenced either party to this Agreement to execute the same, and it is hereby agreed that the remainder of this Agreement shall be valid and in full force and effect.

(i) The parties hereby covenant and agree that the covenants contained in this Agreement are intended to run with the lands, and this Agreement shall enure to the benefit of and be binding upon them, their respective heirs, executors, administrators, successors and assigns, it being the express intention of the parties hereto that subsequent purchasers and mortgagees in possession shall obtain the benefit of and be bound by the provisions of this agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by the hands and seals of their duly authorized officers on the day and year first above written.

SIGNED, SEALED AND DELIVERED)
In the Presence of:)

-----)
(Witness))

-----)
(Witness))

JANET MONCHALIN

NORMAN MONCHALIN

487788 ONTARIO LTD.

Name:

Title:

Name:

Title:

**I/We have authority to bind the
corporation.**

**THE CORPORATION OF THE
TOWN OF FORT ERIE**

Per: _____

MAYOR

CLERK

Date: _____