



August 15, 2024

File: 20137

City of Niagara Falls  
P.O. Box 1023  
4310 Queen Street  
Niagara Falls, ON L2E 6X5

**Attention: Suzanne Anderson – Committee of Adjustment Secretary-Treasurer**

**Re: Application for Minor Variance – NE Corner Kalar & McLeod, ON**

---

### **Introduction**

On behalf of the property owners, The Butera Group Inc., Upper Canada Consultants submits the enclosed application for Minor Variance affecting the property identified as ARN 272509000600100 at the North-East corner of Kalar and McLeod in the City of Niagara Falls.

The submitted minor variance seeks to address interior side-yard encroachment provisions for an intended apartment development consisting of 12 and 13 storey buildings.

The following items have been included with this submission:

- One (1) Signed Minor Variance Application
- Site Plan – by Upper Canada Consultants
- Building Elevations – ACK Architects

### **Application Overview**

The Butera Group Inc., is seeking to finalize site plan approval for two apartment buildings. The requested variance is to facilitate the desired balconies. The site underwent a Zoning By-law Amendment and an Official Plan Amendment in 2022, (AM-2022-005), and has received conditional site plan approval in 2024 (SPC-2024-003). The proposed balconies have always been included with each application, but were overlooked upon implementation of the site-specific zoning, By-law No. 2022-15. This application is made to redress that oversight and permit the intended balconies.

### **Minor Variance**

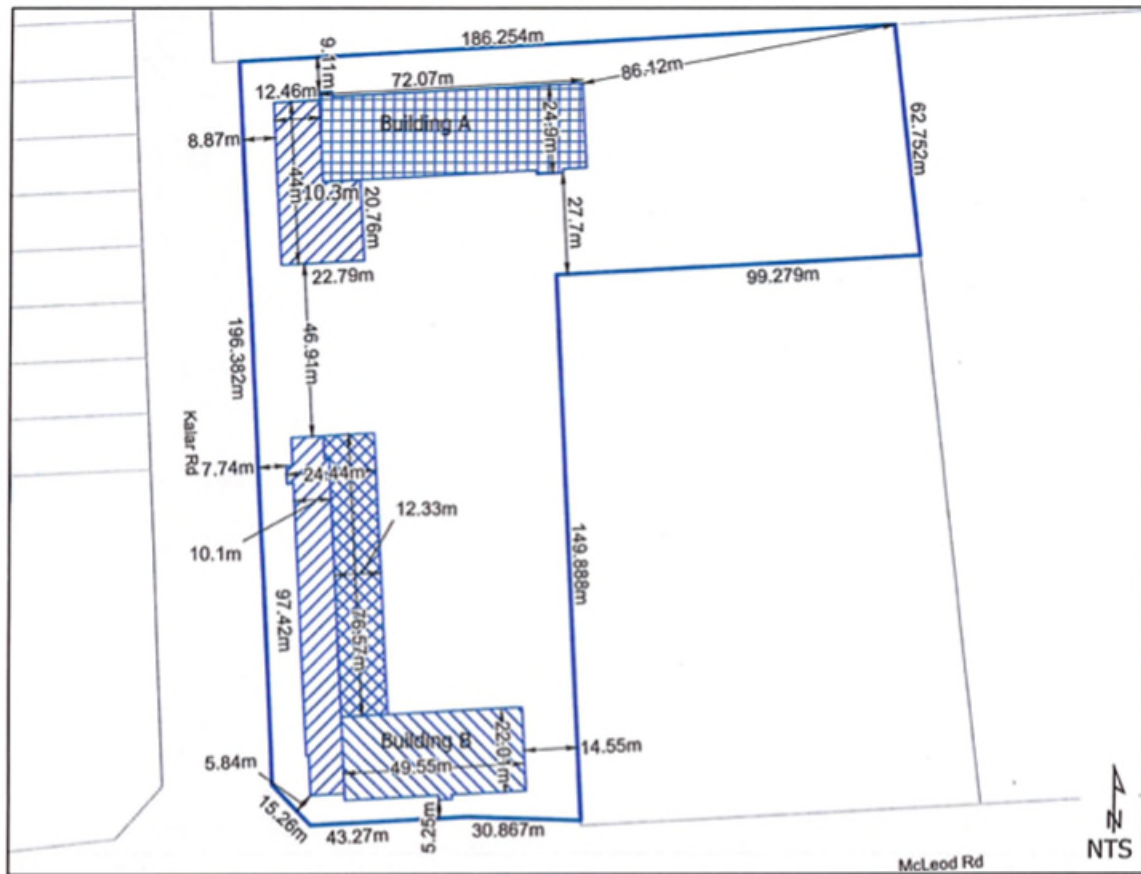
The subject lands are zoned as Residential Apartment 5F 1190 (R5F-1190) under the City's Comprehensive Zoning By-law. Apartment buildings under R5F-1190 are a permitted use under



the zoning. The subject lands received approval for an Official Plan and Zoning By-law Amendment in 2022, to permit 12 and 13 storey apartment buildings with 483 dwelling units.

Under Schedule 2 to By-law No. 2022-115, the lands are subject to site specific provisions outlined in Figure 1.

## SCHEDULE 2 TO BY-LAW NO. 2022-115



**Amending Zoning By-law No. 79-200**

Figure 1. Zoning regulations governing location of building.

These regulations permit a western side-yard setback for Building A of 8.87 metres to the lot line abutting Kalar Road, and a western side-yard setback for Building B of 7.74 metres the lot line abutting Kalar Road. As well, the regulations permit an eastern side-yard setback for Building B of 14.55 metres.

The site is also subject to the zone requirements under Section 4.14 c) of By-law No. 79-200. This provision specifies that open balconies not covered by a roof or canopy may project into any



required front yard or rear yard a distance of not more than 1.8 metres, and into any required side yard a distance of not more than 0.45 metres.

As a result of the site-specific zoning, the proposed balconies encroach beyond the permitted allowances into the required interior side-yards for both Building A and Building B. This minor variance application has been submitted to permit an encroachment of 1.8 metres into a required side-yard. Based upon a setback of 8.87 metres for the western side of Building A, the balconies encroach up to 7.27 metres, where they are only permitted to encroach not more than 8.42 metres.

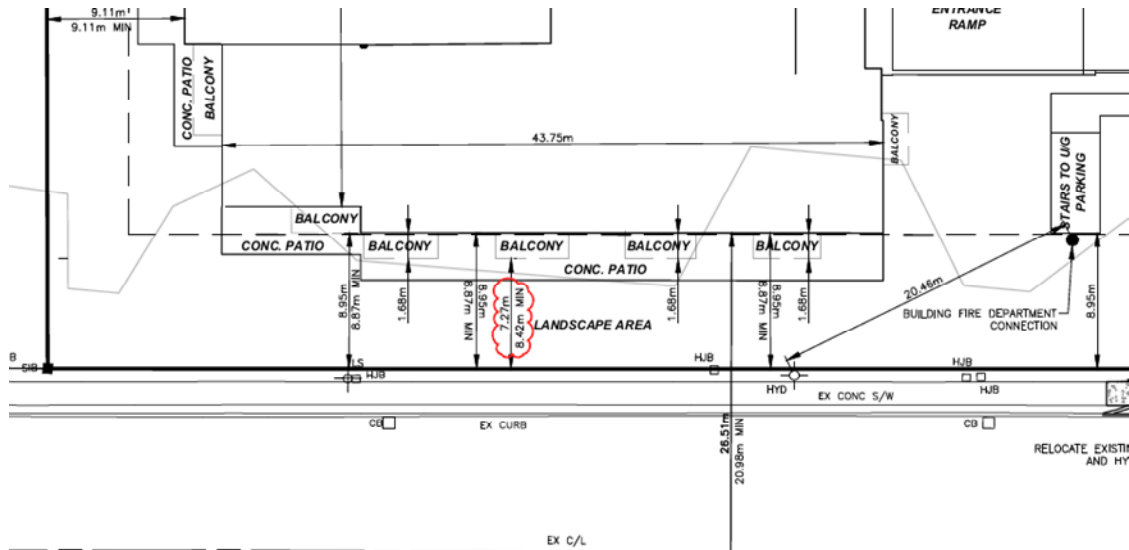


Figure 2. Building A, western facing setback and encroachment.

For the eastern side of Building B, the setback is 14.55 metres, with a permitted encroachment permitted of not more than 14.10 metres.

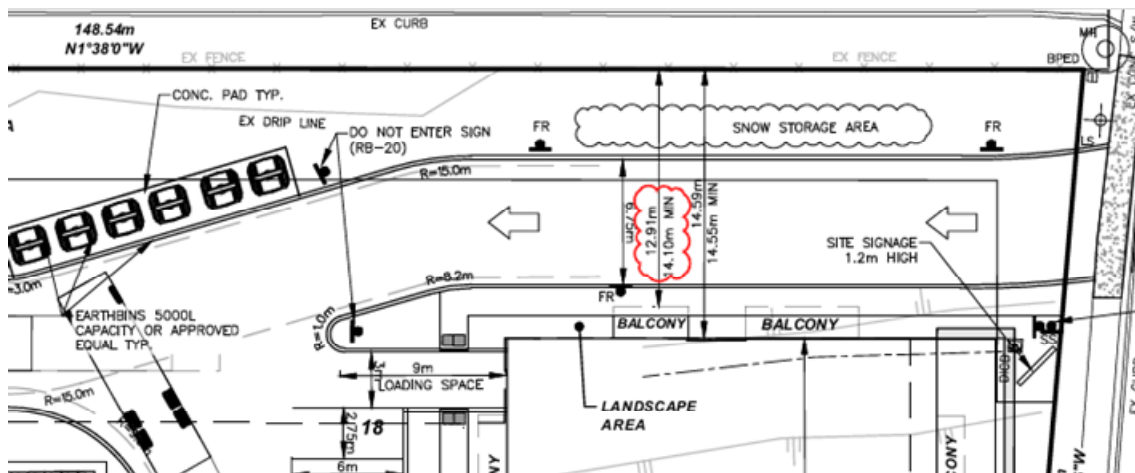


Figure 3. Building B, eastern facing setback and encroachment.



The Planning Act permits the Committee of Adjustment to authorize a minor variance from the requirements of a Zoning By-law, subject to satisfaction of the four “tests” contained in Section 45(1) of the Act:

*1. Does the variance maintain the general intent and purpose of the Official Plan?*

The subject lands are designated as “Special Policy Area 86”, in the City of Niagara Falls Official Plan following OPA #152, By-law 2022-116, which was approved September 12, 2022. The general intent and purpose of Special Policy provision is to facilitate the development of two multi-storey apartments on the Residential designated portion of the lands.

While the subject lands are not located within a delineated intensification node, the development leverages the benefits of intensification through the efficient use of land, infrastructure and public services. The development site is located on two arterial roads which are both transit routes. The addition of the apartment units at this location will make efficient use of the existing road and transit infrastructure.

The Official Plan makes multiple references to engaging street frontages and the importance of providing amenity spaces in intensification nodes, and through the provision of balconies to achieve this outcome. In addition to this guidance, Policy 3.13.10.2 d) also encourages minor variations in setbacks in mid-rise building to create a more interesting streetscape, and Policy 3.13.10.2 l), specifies that balconies should be designed in mid-rise buildings as integral parts of a building. Similarly, Policy 3.4.3.4 iii) provides that private amenity space should be created by the incorporation into a building of balconies.

The proposed balconies have been a consistent feature throughout the development approvals process for OPA/ZBA and Site Plan approval, and were missed as part of zoning review for the implemented Zoning By-law 2022-15. The balconies are intended to provide generous, functional amenity space for residents of these buildings and are a positive facet of the development proposal.

The variance therefore maintains the general intent and purpose of the Official Plan as it will allow the development of spacious, useable balcony amenity space for future residents and will help engage the street frontage to create a livelier streetscape. Accordingly, the application is deemed to conform with the City of Welland Official Plan.

*2. Does the variance maintain the general intent and purpose of the Zoning By-law?*

The subject lands are Zoned as Residential Apartment 5F 1190 (R5F-1190) in City of Niagara Falls Zoning By-law. This Zone permits the apartment buildings, subject to Schedule 2 of By-law No.2022-115. The intention of these provisions was to control the siting of the building

within the lot, that the dimensions matched the reviewed architectural plans, and to ensure that there are appropriate setbacks to the lot line.

The site is also subject to 4.14 c) of By-law No. 79-200, which regulates projections into required yards. The intent of the allowed projection encroachment is to ensure that balconies do not cause nuisance overlook into neighbouring properties.

The requested variance recognizes that the subject site is a corner lot, and the buildings front onto both Kalar and McLeod. While the technical frontage for zoning purposes is McLeod Road because it is the smaller of the two frontages, the building functionally fronts onto both Kalar and McLeod, without a prominent distinction between front and side-yard. Therefore, the side-yard provisions and concern regarding overlook are not applicable. The same allowances for encroachments into the front yard should apply to frontages onto both Kalar and McLeod, regardless of whether one is technically a side yard based upon frontage width. The 1.8m encroachment for front and rear-yard setbacks is considered appropriate under current zoning. Therefore, the same consideration should be made for the building's second frontage, as it will have approximately the same impact and effect on the streetscape.

Concerning Building B's eastern side: the interfacing features at 8175 McLeod Road are a drive aisle and parking lot. The landscape plans as submitted to satisfy conditional site plan approval, and that will be reviewed and approved by staff, will also further buffer between the two sites. This demonstrates that there is adequate buffering against overlook and privacy issues between Building B and 8175 McLeod Road.

For these reasons, the variance is considered to maintain the intent and purpose of the Zoning by-law.

3. *Is the variance desirable for the appropriate development and use of the land, building or structure?*

The variance is desirable because they will allow the provision of large balconies and additional private amenity space for the enjoyment of future residents, and will have a positive impact on animating the frontage onto Kalar, and negligible impact to the property abutting Building B's eastern side, as the interfacing portion of 8175 McLeod Road is a drive aisle and parking lot. This is sufficient buffering from any overlook concerns from Building B regarding balcony encroachments, as the larger impact of the building in terms of massing and height has already been considered and approved by Council.



4. *Is the variance minor in nature?*

The variance requests in a 1.35 metre difference between what is requested and what is permitted under the current by-law. Relief in this provision will have a positive impact to both the streetscape, and the outdoor amenity space provisions of future residents, with negligible impact on the neighbouring property. The requested variance is therefore minor.

**Conclusion**

A minor variance application has been submitted for the property known as ARN272509000600100 in the City of Niagara Falls. The application pertains to Section 4.14 c) of the Zoning By-law.

A mid-rise apartment dwelling is a permitted use for the subject lands under the Official Plan and Zoning By-law. The subject variance is small and rectifies the provisions for a balcony encroachment into a required yard, allowing an encroachment of 1.8m into a required side-yard.

The variances maintain the intent and purpose of the Official Plan and Zoning By-law, are desirable and appropriate for the use and development of the subject lands, and are minor in nature. In my opinion, the requested variances represent good planning, and should be supported.

Yours very truly,

Nicholas Godfrey, MA, MCIP, RPP  
Senior Planner  
Upper Canada Consultants