

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 2424 (2002)

Being a by-law to authorize the Mayor and Clerk to enter into a
Temporary Use Agreement with Edward Charles Minchin and Anna
Marie Minchin

WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to
enter into a Temporary Use Agreement with Edward Charles Minchin and Anna Marie Minchin
for the purpose of allowing the use of a garage as a temporary residence;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF
PELHAM ENACTS AS FOLLOWS:

- (1) THAT the Temporary Use Agreement attached hereto and made part of this by-law
between the Corporation of the Town of Pelham and Edward Charles Minchin and Anna Marie
Minchin be and the same is hereby approved.
- (2) THAT the Mayor & Clerk be and each of them is hereby authorized and instructed on
behalf of the Corporation of the Town of Pelham to execute the said Temporary Use Agreement
and the Clerk is hereby authorized to affix the Corporate Seal thereto.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
21ST DAY OF OCTOBER, 2002 A.D.


MAYOR RALPH BEAMER


CLERK CHERYL MICLETTE

**TOWN OF PELHAM
TEMPORARY USE AGREEMENT**

THIS AGREEMENT made in triplicate this 11th day of November, 2002, and authorized by By-law No. 2424 (2002) of The Corporation of the Town of Pelham.

BETWEEN:

EDWARD CHARLES MINCHIN and ANNA MARIE MINCHIN
hereinafter called the OWNER
OF THE FIRST PART

AND:

THE CORPORATION OF THE TOWN OF PELHAM
hereinafter called the TOWN
OF THE SECOND PART

WHEREAS:

1. The Owner warrants and represents it is the registered Owner, in fee simple, of the Lands described in Schedule "A" attached hereto and made part of this Agreement;
2. The Owner desires that the Town allow the Lands to be developed and used for one single detached dwelling and one detached garage converted for use as an accessory single detached dwelling for the period of time permitted in a Temporary Use By-law passed for that purpose;
3. The Town is of the opinion that it is in the best interest of the Town and its inhabitants for any construction or development on the Lands to proceed upon the Owner being required to undertake to make certain arrangements and to give certain assurances with and to the Town for the health, safety, convenience and well being of the public; and
4. The Owner agrees to enter into a Temporary Use Agreement with the Town, pursuant to Section 39 of the *Planning Act*.

NOW THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00) paid by the Town to the Owner, the Town, the Owner mutually covenant and agree as follows:

1. DEFINITIONS

In this Agreement:

- (a) Chief Building Official means the Chief Building Official of the Town as appointed by by-law of the Council.
- (b) Director of Finance means the Director of Finance of the Town.
- (c) Director of Planning Services means the Director of Planning Services of the Town.
- (d) Director of Operations means the Director of Operations of the Town.
- (e) Lands means the lands described in Schedule "A" attached hereto and made part of this Agreement.
- (f) Owner means Edward Charles Minchin and Anna Marie Minchin.
- (g) Required, where not specified, means required by this Agreement and/or an appropriate authority.
- (h) Town means The Corporation of the Town of Pelham or any of its authorized full-time employees.

2. BUILDING PERMIT

The Owner acknowledges and agrees that the Town shall be under no obligation to issue a building permit on the Lands until:

- (a) Such plans, which in the opinion of the Director of Planning Services are necessary for the development of the Lands, have been approved in writing by the said Director;
- (b) The Owner has obtained all necessary approvals from any government agency having an interest in the development;
- (c) All Municipal taxes in arrears are paid in full; and
- (d) An Entrance Permit, if required, has been obtained allowing driveway connections to the driveway access.

3. PREPARATION AND SUBMISSION OF PLANS

The Owner acknowledges and agrees that:

- (a) Required building plans will be in accordance with the Town's Building By-law and requirements of the Chief Building Official; and
- (b) All plans required by this Agreement shall be submitted by the Owner or agent and receive approval of the Town no later than six months after the passing of a by-law by the Town to enter into this Agreement.

4. BUILDINGS, CONSTRUCTION, OCCUPANCY AND REMOVAL

- (a) The Owner agrees that any buildings or structures on the Lands will be constructed entirely in accordance with:
 - (i) any plans related to the proposed buildings or structures that may be approved by the Town;
 - (ii) the provisions of the Ontario Building Code, the Town's Building By-law and the requirements of the Chief Building Official;
 - (iii) the requirements of the Zoning By-law, as amended, of the Town;
 - (iv) the requirements of this Agreement;
 - (v) any applicable statute, regulation or code of any other authority having jurisdiction.
- (b) The Owner agrees not to perform any construction or installation on the Lands except in accordance with the terms and conditions contained in this Agreement unless otherwise agreed to and approved, in writing, by the Director of Planning Services.
- (c) The Owner agrees not to construct or install private servicing until the Director of Operations and the Region, if required, have formally approved such work.
- (d) The Owner agrees that Edward Charles Minchin and Anna Marie Minchin shall reside separately in the converted detached garage permitted by a temporary use by-law affecting the Lands described in Schedule "A".
- (e) The Owner agrees to decommission the accessory structure, so that it would not be suitable for residential use, within six (6) months of the temporary use by-law or any extension thereof ceasing to exist or terminating. Such decommissioning shall be completed to the satisfaction of the Chief Building Official.
- (f) In January of each year, the Owner shall provide a letter to the Director of Planning Services advising that Edward Charles Minchin and Anna Marie Minchin are the sole occupants of the converted garage.

5. NOTIFICATION

Any Notice or Notification pursuant to the terms of this Agreement may be effected by prepared First Class Mail:

- (a) By the Town upon the Owner at its address: 820 Canboro Road, Fenwick, ON L0S 1C0, unless otherwise advised.
- (b) By the Owner upon the Town at its address: 20 Pelham Town Square, P.O. Box 400, Fonthill, ON L0S 1E0.

Service of such Notice or Notification shall be deemed to have occurred seven (7) days after the date of the mailing of same.

6. GENERAL

- (a) The Owner hereby constitutes any successor-in-title to the Lands its agent with full authority to enter into any Agreement with the Town to amend this Agreement from time to time.
- (b) The Owner agrees that upon the execution of this Agreement, the Lands are charged with the performance of this Agreement.
- (c) The Owner understands and agree that the use of land for the use permitted by a Temporary Use By-law shall cease upon the day on which Edward Charles Minchin and Anna Marie Minchin cease to occupy the converted garage.
- (d) The Owner agrees to apply for an extension to the time period permitted in a Temporary Use By-law, a minimum of three (3) months in advance of the expiry date thereof, if the Owner so wishes to have such period of time extended.
- (e) It is understood and agreed that this Agreement and everything contained herein shall enure to the benefit of and be binding upon the heirs, executors, administrators, mortgagees, successors-in-title and assigns of each of the parties hereto as the case may be and shall constitute a covenant running with the Lands.
- (f) The Owner understands and agrees that the Lands will be maintained in accordance with the terms and conditions of this Agreement. Failure of the Owner to do so can result in the Town doing so at the expense of the Owner.
- (g) In the event of any failure by the Owner to carry out any provisions of this Agreement (the determination of which shall rest with the sole discretion of the Director of Planning Services) the Town may provide Notice to the Owner of the nature of the failure.
- (h) If the Owner fails to remedy any failure of which it has been notified pursuant to this Agreement within twenty-one (21) days after Notice by the Town, the Town shall have the full authority, power and right to enter upon the Lands to employ such workmen and to use such equipment and machinery as is deemed, in the sole discretion of the Town, to be necessary to complete and perform any work that is required to remedy the failure. Further, the Owner agrees that in the event of its failure to carry out any provisions of this Agreement and in the event such failure is deemed by the Town, in its sole discretion, to create an emergency in which the safety of the public may be affected, then in such case or cases the Town shall have the full authority, power and right to enter upon the Lands to employ such workmen and to use such equipment and machinery as is deemed in the sole discretion of the Town necessary to remedy the failure without any Notice to the Owner.

- (i) The Owner understands and agrees that any required approvals, permits, certificates, affidavits, plans, drawings, surveys, construction work or maintenance to be provided by the Owner, under the terms of this agreement, shall be at the cost of the Owner.
- (j) The Owner understands and agrees that there shall be no work performed on or development of the Lands except in conformity with all applicable Municipal by-laws and Provincial legislation and that this Agreement or approval of plans does not exempt the Owner from any applicable statute, regulation, or code of any other authority having jurisdiction contrary to the requirements of this Agreement or prevent the Town from taking action to rectify any non-compliance resulting from said work or development taking place.
- (k) The Owner agrees that all Municipal taxes shall be paid in full prior to the execution of this Agreement and such payment shall be made from time to time as each such event may occur so that payments of Municipal taxes are at all times up-to-date.
- (l) The Owner agrees that construction work relating to the Lands or any building, structure, utility, or service therein or thereon will be carried forward as expeditiously as may be in a good and workmanlike manner in accordance with good trade practice so as to cause a minimum of nuisance to the neighbours of the Lands.
- (m) The cost, including legal, planning, engineering or other professional or administrative costs incurred by the Town, of any work affected by the Town pursuant to this Agreement shall be calculated by the Town, whose decision on the amount that is fixed shall be final. The cost of any such work shall be at the expense of the Owner. Any cost of such work shall be paid by the Owner to the Clerk forthwith upon demand thereof. In the event of failure by the Owner to pay such costs within thirty days of serving Notice thereof by the Town upon the Owner, the Town shall have the right to recover such incurred costs by action or in like manner as Municipal taxes.
- (n) Any work performed by the Town pursuant to the provisions of this Agreement shall not be deemed to be an assumption by the Town of any liability of any nature or kind in connection with such work or a release of the Owner by the Town of the obligations of this Agreement.
- (o) The Owner grants to the Town, its servants, agents and assigns, permission to enter upon the Lands for the purpose of inspection of any work referred to in this Agreement and for the purpose of completion of any works in accordance with this Agreement and such entry and inspection shall not be deemed an acceptance of any of the works by the Town or an assumption by the Town of any liability in connection therewith or a release of the Owner from any of its obligations under this Agreement.
- (p) In the event of any dispute respecting the interpretation of any Town Standards, the matter is to be decided by the Council of the Town and its decision is final and binding.
- (q) The Owner will at all times indemnify and keep indemnified and save harmless the Town from any losses, costs, damages and injuries which the Town may suffer or be put to for or by reason of the construction, maintenance or existence of any work done by the Owner, their contractors, servants or agents on the Lands or on any lands adjacent to such Lands and such indemnity shall constitute a first lien and charge on the Lands in favour of the Town.
- (r) The Owner will at all times indemnify and keep indemnified and save harmless the Town from losses, costs, damages and injuries which the Town may suffer or be put to for or by of any activity on or emanating from the Lands and such indemnity shall constitute a first lien and charge on the Lands.

- (s) The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any Administrative Tribunal the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement or this Clause may be pleaded as an estoppel against the Owner in any such proceeding.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date and year first above written.

THE CORPORATION OF THE TOWN OF PELHAM

Ralph Beamer
Mayor Ralph Beamer

Cheryl Miclette
Clerk Cheryl Miclette

OWNER

Ellen Schmidt
Witness

Edward Charles Minchin
Edward Charles Minchin

OWNER

Ellen Schmidt
Witness

Anna Marie Minchin
Anna Marie Minchin