

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 14, 2014

CASE NO(S): PL120309

Mason Reid has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 66-1996 of the Township of North Kawartha to rezone lands respecting 1180 Anstruther Lake to a bunkhouse.
OMB File No. PL120309

Heard: April 30, 2014 in Apsley, Ontario

APPEARANCES:

Parties

Counsel

Mason Reid

R. Taylor

Township of North Kawartha

M. J. Ewart

Participant

Doug Unsworth

MEMORANDUM OF ORAL DECISION DELIVERED BY M. A. SILLS ON APRIL 30, 2014 AND ORDER OF THE BOARD

[1] This was a Settlement hearing with respect to an appeal by Mason Reid ("Applicant/Appellant") resulting from the refusal of the Council of the Township of North Kawartha ("Township") to enact a proposed amendment to Zoning By-law No. 66-1996 ("ZBL") respecting the lands legally known as Part Lot 12 and 13, Concession 6, in Anstruther Ward, and municipally known as 1180 Anstruther Lake ("subject property").

[2] The subject property is located on the west shoreline of Anstruther Lake. The

application pertains to an accessory building (“Bunkie”) located in the northeast part of the property, facing the lake. The main structure (seasonal dwelling) is located further back, on the western part of the property. The Bunkie, constructed approximately four years prior, was not built in accordance with the building permit.

[3] The purpose and effect of the proposed Zoning By-law Amendment (“ZBA”) is to legalize the existing Bunkie. Specifically, the application is required in order to recognize the height of the Bunkie relative to the main building. In this case, although the main building is sited atop an embankment overlooking the Bunkie and shoreline, the actual height of the Bunkie is slightly greater than the height of the main building.

[4] The parties have now resolved this matter in accordance with the duly constituted Minutes of Settlement, filed with the Board as Exhibit 2. The Affidavit of Ian Mudd (Manager of Planning - County of Peterborough) in support of the Settlement and proposed ZBA was filed as Exhibit 3.

[5] Several local residents in opposition to the application were in attendance. At the request of the parties, the Board recessed for a period of time in order to allow counsel time to canvass and/or respond to the concerns of the attendees.

[6] When the hearing resumed, Doug Unsworth sought and was granted Participant status. He owns the property immediately north of the subject property and is opposed to the Bunkie as constructed.

[7] Local residents Peter Northrop and David Bell elected not to seek Participant status, but did ask that the Board consider their concerns as set out in letters provided to the Township and the Board.

[8] Mr. Unsworth’s contentions as listed in his witness statement are as follows:

- The size and height of the Bunkie has a significant negative impact on the view from our cottage towards the lake and has affected our use and enjoyment of our cottage.
- The building will have a significant negative impact on the value of our property. We certainly would not have purchased this property if this building existed at this location.
- We are concerned about the impact approval will have on future development on Anstruther Lake.

[9] In support of his contentions respecting “view”, Mr. Unsworth provided three photographs he had taken of the Bunkie, one which he purports to have taken just beyond the water’s edge in front of the subject property (Exhibit 5). The apparent purpose of these photographs was to portray the Bunkie as an overly imposing structure, particularly from the viewpoint of the lake. During cross-examination, Mr. Unsworth conceded that these photos were taken utilizing a zoom lens.

[10] Mr. Unsworth has requested that as part of the Settlement Agreement, the Applicant/Appellant be required to establish and maintain a vegetative buffer using mature conifer trees between his cottage and the Bunkie. While he confirmed under cross-examination that the Applicant/Appellant has planted trees along the separating property line, these were only seedlings and he feels that mature trees are required in order to provide an adequate privacy buffer.

[11] Both Mr. Northrop and Mr. Bell own properties directly across the lake from the subject property. Among other things, their concerns included aesthetics and precedence. Notably, many of the concerns set out in their respective letters involved matters which are either not relevant to the Board’s disposition of this matter and/or not within the purview of the Board.

[12] For instance, not only is Mr. Northrop asking the Board to deny the proposed settlement and disallow the height change, but he also has requested that the Board “recommend to the Municipality that the existing unapproved structure be removed completely and without further delay”.

[13] Decisions of the Board are premised on Provincial and local planning policy and the principles of good land use planning. On appeal, the Board’s role is to assess the planning merits of an application based on the evidence presented at the hearing. Decisions of the Board are not intended to serve a punitive purpose. Moreover, it is not the role of the Board to scrutinize the actions of municipal officials or others beyond the appeal and hearing process.

[14] In this case, the Board had before it the planning analysis and expert opinion evidence of Mr. Mudd and the Applicant/Appellants’ planner, Kevin Duguay. Both planners agree that development of the Bunkie is consistent with the policies of the Growth Plan for the Greater Golden Horseshoe (“GP”) and the Provincial Policy Statement, 2014 (“PPS”), and in conformity with the County of Peterborough Official Plan (COP”) and the Township of Kawartha Official Plan (“TOP”). In effect, the proposed ZBA appropriately implements the objectives and directives established by the current planning regime.

[15] Mr. Mudd, in having considered the abutting properties, neighbouring properties, and the lake, is of the opinion that the Bunkie does not have an adverse impact from a land use planning perspective. He further submitted that in his professional opinion, no provision of the *Planning Act* (“Act”) is contravened by way of the implementation of the proposal, the proposed settlement, or the approval of the ZBA. He recommended approval.

[16] Mr. Duguay’s planning analysis provides further details with respect to the key policies of the Provincial and local planning policy documents (GP, PPS, COP and TOP) to be considered. In this regard, it is his opinion that the proposal meets the

policy directives of the relevant planning documents.

[17] Section 3.1(d) of the ZBL establishes that an accessory structure is not to exceed the height of the principal dwelling on the property. Through his analysis, Mr. Duguay has determined that the Bunkie is 0.86 metres higher than the principal building. In his opinion, the Bunkie as constructed does not create any visual impact on the shoreline or any adjacent property.

[18] The Board accepts and adopts the planning evidence of Mr. Mudd and Mr. Duguay and is satisfied that the proposed ZBA is appropriate. The uncontested evidence of the planners was that the development is consistent with the established Provincial and local planning direction. In effect, the proposed ZBA appropriately implements the objectives and directives established by the current planning regime.

[19] The Bunkie is a permitted use, and although it exceeds the height standard of the ZBL, there was no evidence before the Board to substantiate the concerns that the structure has or will adversely impact abutting and/or neighbouring property owners. As constructed, the Bunkie presents no risk to the natural environment; the shoreline, the lake or the fish habitat. The Board is satisfied that matters of the public interest are being sufficiently safeguarded.

[20] Mr. Unsworth maintains that the Bunkie as constructed “has a significant negative impact on the view from our cottage towards the lake”. Notwithstanding that from a planning perspective, a “view” is not guaranteed (particularly a view across another’s property) the Board is satisfied that the differential in the actual height and as-of-right construction (0.86 m) would at most, have a negligible impact on the view from his cottage.

[21] With respect to his other concerns, the Board finds there is no reason to believe that the Bunkie will either interfere or influence future development on the lake, and property values is not a factor which can be considered in the determination of a planning application. The Board can find no basis for requiring the Applicant/Appellant

to plant mature trees on the property, and will not do so.

ORDER

[21] The Board orders that the appeal is allowed in part, and By-law No. 66-1996 is amended in the manner set out in Attachment 1 to this order.

"M. A. Sills"

M. A. SILLS
MEMBER

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

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

ATTACHMENT 1
The Corporation of the Township of

North Kawartha

By-Law # /14

Being a By-Law Under the Provisions of Section 34 of the Planning Act R.S.O. 1990, Chap. P.13, As Amended, to Amend Zoning By-Law #66-1996, As Otherwise Amended, of the Corporation of the Township of North Kawartha, With Respect to Certain Lands Described As Concession 6, Part Lot 12 and 13, In the Geographic Area of Anstruther, In the County of Peterborough, Roll #020-202-27304

Whereas Zoning By-Law #66-1996 as otherwise amended, was passed under the authority of a predecessor of Section 34 of the Planning Act, R.S.O. 1990, Chap. P. 13, as amended.

And Whereas the matters herein are in conformity with the provisions of the Official Plan of the County of Peterborough as approved by the Ministry of Municipal Affairs and Housing:

And Whereas the Council of the Corporation of the Township of North Kawartha conducted a public hearing in regard to this application, as required by Section 34(12) of the Planning Act, R.S.O. 1990, Chap. P. 13, as amended.

And Whereas the Council of the Corporation of the Township of North Kawartha deems it advisable to amend Zoning By-law 66-1996 as otherwise amended, with respect to the above described lands, and under the provision of the Planning Act has the authority to do so.

Now Therefore the Council of the Corporation of the Township of North Kawartha hereby enacts as follows:

That the proposed amendment will upon coming into force and effect, serve to amend By-law # 66-1996 and amended in the Shoreline Residential - 275 (SR-275) Zone.

Notwithstanding any provision in By-Law 66-1996 it is herein enacted that the following shall apply in regard to the seasonal residential - 275 (SR-275) Zone:

- 1) A Bunkhouse with a total floor area of 76.18 square metres (820 square feet by exterior dimensions) over 2 levels is permitted.
- 2) The average overall height of the Bunkhouse to be 0.817 metres (2.6 ft) higher than that of the principal building at this property is permitted.
- 3) The 2 storey height of the Bunkhouse from finished grade at the basement walkout to the peak of the roof to be 7.81 metres (25.6 ft) is permitted.

All other provisions in all other respects as set out in the Provisions of the Shoreline Residential Zone shall apply and be complied with as identified in By-Law No. 66-1996, as amended.

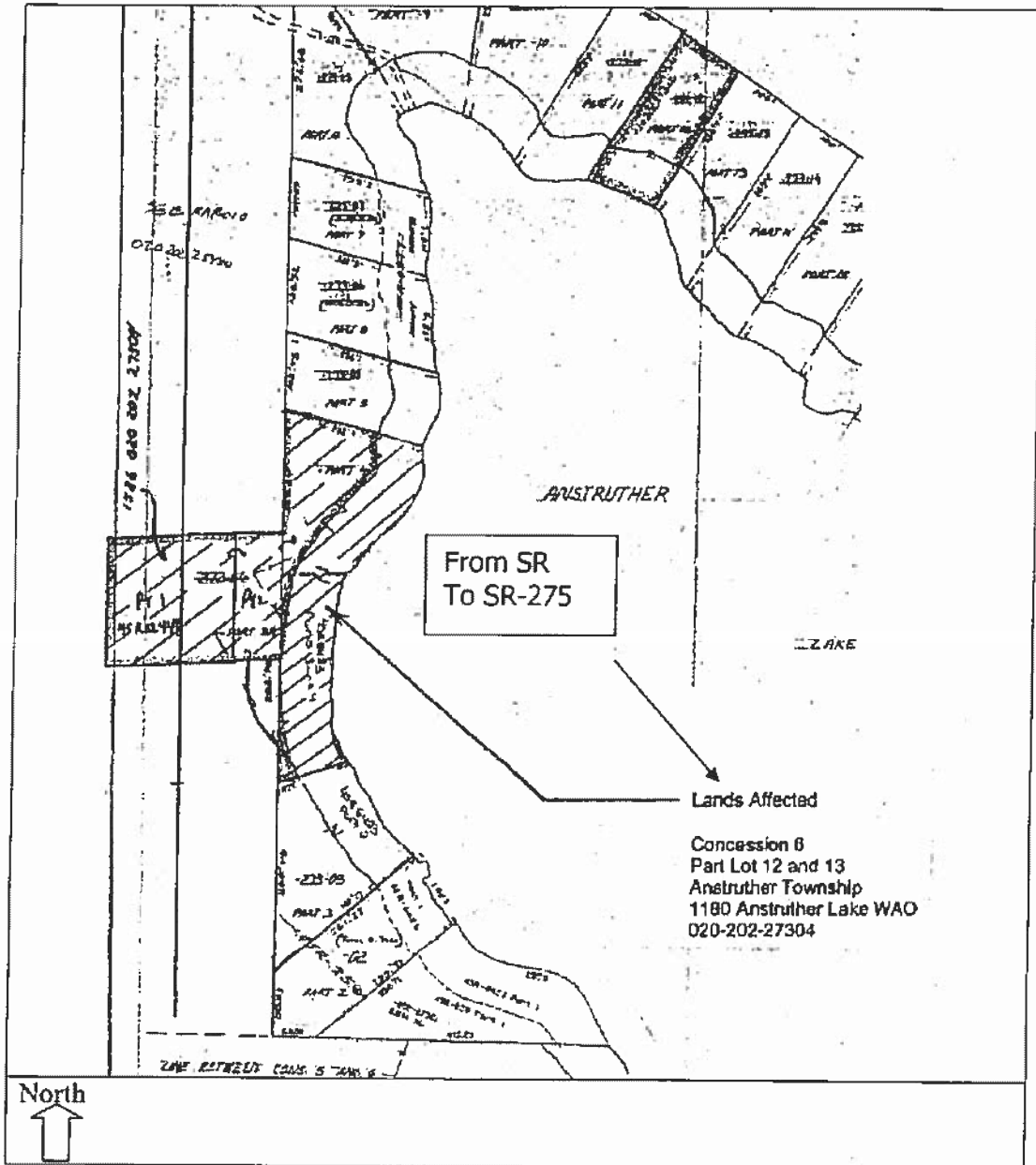
That this By-Law shall come into force and effect on the day it is passed by the Council of the Corporation of the Township of North Kawartha, subject to the applicable provisions of the Planning Act, Statutes of Ontario, 1990 Chap. P. 13, as amended.

Read a First, Second and Third Time and Passed in Open Council This 7th Day of February, 2012

Jim Whelan, Reeve

Connie Parent, Clerk

**Schedule '1' to By-law No. ___
Township of North Kawartha**



Mayor

Clerk

Date

Date