

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 21, 2014

CASE NO(S): PL131340

Raivo Rimmel 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 to enact a proposed amendment to Zoning By-law 66-1996 of the Township of North Kawartha to rezone lands respecting 2023 Anstruther Lake Road to a site specific zoning to permit the enlargement of an open deck.
OMB File No. PL131340

Heard: June 18, 2014 in Apsley, Ontario

APPEARANCES:

Parties

Counsel

Raivo Rimmel

J. Grant

MEMORANDUM OF ORAL DECISION DELIVERED BY M. A. SILLS ON JUNE 18, 2014 AND ORDER OF THE BOARD

[1] Raivo Rimmell ("Applicant/Appellant") has appealed the decision of the Council of the Township of North Kawartha to refuse to enact a proposed Zoning By-law Amendment ("ZBA") with respect to the property known as 2023 Anstruther Lake Road.

[2] The purpose and effect of the proposed ZBA is to recognize and permit a replacement open deck to the front of an existing Bunkie, encroaching further into the water yard than the original deck.

BACKGROUND

[3] The owner of the property has reconstructed an open deck attached to a private cabin on the subject property. Although the deck is attached to the private cabin, the County of Peterborough Official Plan ("OP") and the Township of

Burleigh and Anstruther Zoning By-law No. 66-1996 (“ZBL”) identify an open deck as a separate structure for planning purposes.

[4] The previous deck was located 1.52 metres (“m”) from the high water mark of Anstruther Lake; the reconstructed deck is located 0.91 m from the high water mark. The new deck utilizes the existing deck footings that supported the original deck, and only the platform of the reconstructed deck encroaches into the existing setback.

[5] In accordance with s. 7.2 (o) of the ZBL, the enlargement of existing decks within the water yard setback is not permitted within 9 m of the high water mark. Further, s. 3.17 states that a non-conforming building or structure may not be expanded. Therefore, the Township requested that the property owner apply for a ZBA to rezone the subject property from the Residential Shoreline (RS) Zone to a site specific Residential Shoreline Exception Zone in order to recognize the reduced setback.

[6] Kent Randall is a registered professional planner, and a Member of the Canadian Institute of Planners and the Ontario Professional Planners Institute. He provided contextual and expert opinion evidence in support of the application.

[7] The subject property is located on a peninsula forming part of the southern shore of Anstruther Lake. The property has a total lot area of 0.51 hectares with 69.4 m of frontage on the lake. Adjacent uses include shoreline residential and recreational land uses. The property is occupied with the subject private cabin and deck, a dwelling, septic system, dock and shed. The property is well treed with significant shoreline vegetation, including multiple spruce trees.

[8] Mr. Randall told the Board that although the Township has referred to the deck as “legal non-conforming” and referenced s. 3.17 of the ZBL, it is his professional opinion that the deck is a legal “non-complying structure” which conforms to the RS Zone. In this respect, given the small increase in the size of

the deck, he is of the opinion that an application for a minor variance would have been more appropriate. However, as an application for a ZBA has been submitted, his planning analysis examines the proposed amendment in the context of the applicable policy documents.

[9] However, it was his opinion that should the appeal be granted, the associated ZBA should be rewritten in order to properly recognize the reconstructed deck and implement the new OP policies of s. 6.2.5.3 on the subject property. In this regard, he has provided a draft (Exhibit 1 – Tab 15).

[10] In this regard, Mr. Randall told the Board that the current ZBL was last updated in 1996, prior to the approval of the new OP (2009). Consequently, in many instances, the ZBL is not in conformity with the OP.

[11] For instance, the Township indicated in their notifications and report that the proposed ZBA would amend s. 3.17 of the ZBL. This section pertains to legal non-conforming buildings and structures. Mr. Randall contends that legal non-conforming status is reserved for existing uses, buildings or structures that are no longer permitted on the property under the current zoning provisions and regulations.

[12] Mr. Randall takes the position that the reconstructed deck is a permitted use in the RS Zone. As stated, the reconstructed deck does not meet the required setback from the high water mark. Therefore, the deck is non-complying with the existing ZBL and is not considered a legal non-conforming use. Accordingly, s. 3.17 is not applicable.

[13] In this regard, Mr. Randall is of the opinion that the ZBA that was prepared for Council's consideration is problematic for several reasons.

1. The By-law amends s. 7.2 (o), rather than amending the ZBL Schedule to include a site specific zone (referred to as Shoreline Residential – 318 Zone) that would recognize the reconstructed deck, notwithstanding s. 7.2 (o).
2. The By-law includes a reference to s. 3.17, which is not applicable to the reconstructed deck.
3. The By-law describes dimensions of the deck that are not required to be recognized with a site-specific zone, including the depth of the deck.

[14] It is Mr. Randall's professional opinion that the proposed draft ZBA is consistent with the Provincial Policy Statement ("PPS"), the Growth Plan ("GP"), the OP (including the local component) and the former Township of Burleigh and Anstruther ZBL. Moreover, the proposed ZBA represents good planning because it would have the effect of implementing the policies of s. 6.2.5.3 (h) of the OP – Local Component (North Kawartha).

[15] The GP and the PPS permits resource-based recreational uses (including recreational dwellings) on lands outside of settlement areas. The private cabin is accessory to the recreational dwelling, with the deck being an extension to the cabin.

[16] The new deck has been constructed utilizing the footings of the former deck, and as such, the extension does not result in any disturbance to the soils or existing vegetation.

[17] The OP establishes policies with respect to Shoreline Areas (s. 4.4). In Mr. Randall's opinion, the proposed ZBA meets the intent of these policies. As the new deck utilizes the footings of the original deck and the extension takes place above the ground, the shoreline has not been altered or impacted in any way. In the same vein, although the new deck is 2 feet closer to the shoreline there is no impact to the waterfront environment. From a visual perspective, the deck is

obstructed from view from the lake by the shoreline vegetation. The re-constructed deck meets the ZBL standards related to width, area and height.

[18] The Board accepts and adopts the evidence and uncontested expert opinion of Mr. Randall to find that the proposed site specific rezoning of the property to permit the deck extension is appropriate, and therefore, is approved.

[19] And further, the Board accepts Mr. Randall's explanation and opinion with respect to the appropriate provisions of the ZBA. In this respect, the Board is satisfied that the proposed ZBA (as set out in Exhibit 1 – Tab 15) appropriately implements the intent of the OP; the public interest has been considered and is being protected.

ORDER

[20] The Board orders that the appeal is allowed and, By-law No. 66-1996 of the Township of North Kawartha is hereby amended in the manner set out in Attachment 1 to this order. The Board authorizes the municipal clerk to assign a number to the by-law for record keeping purposes.

[21] And further, the Board directs, and the property owner agrees, that the requisite building permit fee is to be remitted to the municipality.

"M. A. Sills"

M. A. SILLS
MEMBER

Ontario Municipal Board

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ATTACHMENT 1

The Corporation of the Township of**North Kawartha****By-law # /13**

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 1, Part Lot 8 In The Geographic Area of Anstruther, In the County of Peterborough, Roll #020-202-09700

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 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 made a Decision to refuse the rezoning application and an appeal of such decision has been made to the Ontario Municipal Board;

And whereas the Ontario Municipal Board has the authority to allow the appeal in whole or in part;

Now Therefore the Ontario Municipal Board hereby enacts as follows:

1. That Schedule A to By-law 66-1996, as amended, is further amended by rezoning Part of Lot 8, Concession 1, former Township of Anstruther, from the Shoreline Residential (RS) Zone to the Shoreline Residential Exception Three Hundred Eighteen (RS-318) Zone, as shown on Schedule 'A' attached hereto and forming part of this By-law.
2. That Section 7 of By-law 66-1996, as amended, is further amended by adding the following section:

7.318 RS-318 ZONE

Notwithstanding the provisions of Sections 3.16 and 7.2 (o) of By-law 66-1996 to the contrary, on lands zoned the Shoreline Residential Exception Three Hundred Eighteen (RS-318) Zone the following lot regulations shall apply:

Deck attached to an Existing Private Cabin

- | | | |
|----|------------------------------|-------|
| i) | Setback from High Water Mark | 0.8 m |
|----|------------------------------|-------|

All other applicable provisions of the Shoreline Residential (RS) Zone shall continue to apply.

3. This by-law shall come into force and effect upon approval of the Ontario Municipal Board.

Read a First, Second and Third time and finally passed this ___ day of _____, 20__.

Jim Whelan, Mayor

Connie Parent, Clerk