

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 26, 2016

CASE NO(S): PL150975

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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|-------------------------------|-----------------------------------|
| Appellant: | Tracey Taylor-O'Reilly |
| Applicant: | Anna Wilson |
| Subject: | Minor Variance |
| Variance from By-law No.: | 110-01 |
| Property Address/Description: | 55 McBay Road |
| Municipality: | County of Brant |
| Municipal File No.: | A19/15BH |
| OMB Case No.: | PL150975 |
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| OMB Case Name: | Taylor-O'Reilly v. Brant (County) |

Heard: February 10, 2016 in Paris, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Anna Wilson

Self represented

Tracey Taylor-O'Reilly

Self represented

DECISION DELIVERED BY RICHARD JONES AND ORDER OF THE BOARD

INTRODUCTION

[1] This matter concerns an appeal by the next-door neighbour, Tracey Taylor-O'Reilly, the Appellant, to a package of variances proposed by Anna Wilson, the

Applicant. That “package”, seven in all, involves the severance of her property, known municipally as 55 McBay Road in the County of Brant into two, estate residential lots, which will be undersized in accordance with the prevailing zoning standards.

Additionally, those variances which were also approved by the County’s Committee of Adjustment (“COA”) to allow for retention of two accessory buildings on the severed portion, to be described as the barn and the garage, and for the construction of a new garage on the retained lands which will not meet zoning by-law compliance with respect to setback and height, were also included in the original appeal.

[2] Ms. Wilson’s submission to the COA also consisted of an application to sever, but its subsequent approval by the COA was not appealed in parallel with the notice of decision involving the variances. Nevertheless the conveyance cannot be finalized until the variance approving the lot area deficiency for both retained and severed portions is approved. Therefore, this decision’s reference to a retained and/or severed lot is for description purposes only in the absence of formal lot division.

[3] At the outset of the hearing, the Board was also advised that the Appellant had no further opposition to the proposed, new garage setback and height variations, or the variances relating to the undersized nature of the proposed severed and retained lots.

[4] It quickly became apparent that the Appellant’s principle concern involved the variances associated with the barn and the garage, (on the severed portion) and of these two buildings, the barn received the most attention in terms of testimony and concern.

[5] Neither the Applicant, nor the Appellant had legal counsel but this decision acknowledges the thoroughness and competence of their submissions and participation throughout the hearing. Planning evidence was provided by the County of Brant in support of the variances and by a professional land use planning consultant on behalf of the Appellant.

[6] The seven variances are listed below and as noted, the Appellant acknowledged her acceptance of the first three variances:

- For a reduced lot area of approximately 0.57 hectare (“ha”) whereas the by-law permits 0.6 ha for severance application.
- For a reduced setback of approximately 5.0 metres (“m”) for a proposed garage, whereas the by-law permits 25.0 m.
- For an increased height of approximately 7.6 m for said proposed garage, whereas the by-law permits 5.0 m.
- To recognize 287 square metres (“sq m”) lot coverage for the two existing accessory structures, whereas the by-law permits 140 sq m.
- To recognize 8.3 m front yard setback for the existing barn, whereas the by-law permits 25.0 m
- To recognize 4.4 m interior side yard setback for the existing barn, whereas the by-law permits 6.0 m.
- To permit an accessory use that is not permitted without a primary use (i.e. dwelling).

[7] The seventh variance was approved to preserve the garage and barn by varying a standard in the Zoning By-law which requires a principle residence as a prerequisite for accessory uses. Although from evidence heard at the hearing, it could be deduced that a new home would eventually be built on the severed portion, the conditions attached to the COA approval did not specify a timeline in this regard. Further, building intentions remained unspecified during the hearing, a state of affairs clearly permitted by the seventh variance as noted.

[8] The Applicant now resides with her family in the old farmhouse on the retained portion and up to very recently, her intent was to remain on that property. However, during the hearing she indicated that moving to, and building on, the severed portion was now a possibility. The Appellant resides adjacent to the severed lands, which

accommodate the barn, and garage in an estate residential home (57 McBay Road) constructed not that long ago.

[9] The Board was advised of an effort to mediate a compromise solution prior to the hearing between the two parties but that meeting failed to resolve an agreement.

CONTEXT

[10] The subject lands are designated Rural Residential and Natural Heritage: the latter designation recognizing environmentally sensitive lands in the south part of the ownership. The corresponding zoning designations are Estate Residential Type 1 (ER1) and Special Exception Environmental Protection (EP-1).

[11] Estate residential development has proceeded apace for over a decade or so in compliance with Official Plan (“OP”) expectations, along the McBay Road corridor. Approximately 20 lots have been developed in the same span of time and further development will be realized as this corridor is fully infilled within the Rural Residential designated area.

[12] The OP policy with respect to Rural Residential Areas is noted below in part:

The County’s Rural Residential Areas are existing areas of large lot residential developments that are designated Rural Residential by this Plan. Existing Rural Residential Areas have been identified based on their role as residential areas outside of Urban settlement Areas, Hamlets and Villages and within the Agricultural community. These areas do not have access to County water or sanitary sewage systems.

[13] The barn, which became the focus of the testimony, was originally constructed in approximately 1850. The Applicant stated that the barn “had proven to be sound through a property standards order” and is currently storing firewood, ladders patio furniture and similar personal effects. It no longer has a direct agriculture purpose. According to condition 10) of the COA Decision, the applicants must provide proof that the existing barn and farm facilities on the severed/retained lands have been either

removed or decommissioned (made inoperable for livestock use) as a condition of approval.

[14] The Applicant stated that she had met with the Heritage Committee of the County requesting a heritage designation in January of this year although a final recommendation in this regard had not yet been reached. She further indicated her intention to paint the barn and maintain it in order to preserve its heritage and functional contribution to her property and the surrounding neighbourhood.

[15] The Applicant advised the Board that broad neighbourhood support existed for the retention of the barn.

[16] In contrast, the Appellant claims the barn is a hazard; it is beginning to lean and she is concerned that a barn fire, if ignited, would damage her home given the absence of emergency fire hydrant services to this area. Additionally, it is a source of vermin which have invaded her property. A participant called by the Appellant, R. Duiker, who is a neighbour and a carpenter with experience in barn construction affirmed that the barn is deteriorating because it no longer houses farm animals, whose body heat would serve as a natural form of structural preservation. Barns are built on top of the ground rather than on foundations according to evidence, and are subject to rapid decay if deprived of a domestic animal population.

[17] The garage, although a secondary concern to the Appellant, would oblige the construction of the new home behind that structure if it was not demolished. That prospect could mean that the new home would oppose the Appellant's rear yard, rather than the front or side yard and detract from her back yard privacy.

PLANNING EVIDENCE

[18] The Board heard evidence from John Ariens, a professional planning consultant and Brandon Hassan, a planner with the County of Brant who testified on behalf of the Appellant and Applicant respectively. Their evidence was made in association with s. 45(1) of the *Planning Act*, which sets out the four tests for variances:

- Are the variances minor?
- Are the variances desirable for the appropriate development or use of the land, building or structure?
- Is the general intent of the Zoning By-law maintained?
- Is the general intent of the Official Plan maintained?

[19] Mr. Ariens opined that retention of the house and barn would negatively impact the character of the estate residential area, which still has room to add new lots within the confines of the Rural Residential designation. In this regard, the built remnants (the barn and garage) of the agricultural past are not appropriate where their retention will mean the construction of a new home on the severed portion into the mid or rear part of the lot and establish a front yard setback contrary to the existing pattern of estate residential uses, which are set back approximately 25 m from the front lot line. In this regard, the lack of consistency will create a streetscape inappropriate for the use of the land and promote the retention of buildings, which are unsafe and prone to property standards violations.

[20] Mr. Ariens turned the Board's attention to a policy of the Rural Residential designation which states that: "the pattern of new development shall be logical in the context of existing development" (Policy 2.2.3.3 a) vi)

[21] Mr. Hassan on the other hand, testified that the garage and barn were valid elements of the Rural Residential area from a policy perspective, which added to the neighbourhood's character, particularly the barn that has heritage value. In his view, the estate residential uses exist within the larger agricultural community and, therefore, remaining built evidence of that "community" has a place in the area. Apparently there are four existing barns in the vicinity of the subject lands and the retention of the subject barn is neither anomalous, nor out of character.

[22] He was of the further opinion that Provincial policy supported the reuse of the accessory buildings as a demonstration of efficiency and intensification and that the environmental constraints in the rear of the subject lands would prevent the construction of a new home deep within the interior of the severed lot.

FINDINGS

[23] On balance, the Board prefers the evidence of the County's planner for considerations, which relate to the OP; specifically, s.1.10: the "Strategic Direction of the Official Plan" which is reproduced in part below:

.....The Planning process in the County of Brant will strive to ensure a healthy environment for the residents and future residents, will give priority to the needs of the collective community known as Brant, will encourage and facilitate balanced and sustainable economic growth in appropriate locations, will protect the natural environment, will protect the agricultural resources and rural character that is synonymous with a safe community, will respect the cultural diversity and heritage of the area.....

[24] In the Board's view, although there is a certain virtue with streetscape-related consistency, that characteristic is subordinate in the County of Brant to a broader policy mandate, which emphasizes values of diversity and the protection of rural character. The barn and garage (the garage, to a much lesser degree) express those values and the variances associated with their retention are considered appropriate as a consequence.

[25] The barn and garage have lost their historic, agricultural function, but not their visible connection to the agricultural community, which in this instance extends back over a century and a half with regard to the barn.

[26] The OP accords prominence to the agricultural community and variances and related conditions approved by the COA reflect that priority.

[27] However, in recognition that on going structural decline is inevitable if not arrested (perhaps something a coat of paint cannot restore) this decision adds a condition to those approved by the COA which may help allay the Appellant's safety related concerns which are very real and which were expertly communicated to the tribunal during the hearing.

ORDER

[28] The Board orders that the appeal is dismissed and the variances to Zoning By-law No. 110-01 are authorized with regard to the property known municipally as 55 McBay Road in the County of Brant.

[29] Further, the conditions of approval as noted in the COA Decision dated the 18th day of September 2015 apply to this Order with the addition of the following revisions to Condition 10 and Condition 13:

- Condition 10 is amended with the addition of the following paragraph: That the barn, in the event of its retention, shall be structurally improved to a safe condition in a manner satisfactory to the Building Department of the County of Brant.

- Condition 13 is amended by requiring that all conditions must be fulfilled within one year from the date of this Order.

“Richard Jones”

RICHARD JONES
MEMBER

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