

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: October 23, 2018

CASE NO.: PL170239

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicants and Appellants:	Christopher and Stephanie Pulis
Subject:	Minor Variance
Variance from By-law No.:	2000-57, as amended
Property Address/Description:	174 Bayview Avenue
Municipality:	Township of Tay
Municipal File No.:	2017-A-03
LPAT Case No.:	PL170239
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LPAT Case Name:	Pulis v. Tay (Township)

Heard: September 25, 2018 in Victoria Harbour, Ontario

APPEARANCES:

Parties

Representative

Christopher and Stephanie Pulis	Self-represented
Stan and Nancy Keith	Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY JUSTIN DUNCAN ON
SEPTEMBER 25, 2018 AND ORDER OF THE TRIBUNAL**

[1] This decision follows the hearing of an appeal filed by Christopher and Stephanie Pulis ("Appellants") from the Township of Tay ("Township") Committee of Adjustment ("COA") refusal of an application for variances from Zoning By-law No. 2000-57 ("Zoning By-law") to permit the construction of a boathouse at a property known as 174 Bayview Avenue ("Subject Property").

[2] The Appellants had constructed the boathouse at issue on this appeal and subsequently applied for variances in order to become compliant with the Zoning By-law. Previous to the hearing, the Appellants advised the Tribunal that they had entered into a settlement agreement with their neighbours who intended to seek status on the appeal. As part of the settlement agreement, the Appellants revised their application and now seek the following variances:

1. To reduce the interior side yard setback from 1 metre ("m") to 0.46 m for the south-east corner of the boathouse.
2. To reduce the interior side yard encroachment allowance for eaves/gutters from being 0.75 m into the side yard to having the eaves with gutters and downspouts to have a minimum side yard setback from the property line of 0.28 m.
3. To increase the maximum lot coverage for accessory buildings and structures from 10% to 12.5%.

[3] At the outset of the hearing, the Tribunal added Stan Keith and Nancy Keith ("Keiths") as parties to the appeal. The Keiths own the property next door to the Subject Property that is closest to the boathouse at issue and had opposed the application at the time it came before the COA.

[4] The Township did not appear at the hearing.

[5] On the basis that the revised application for variances would result in either a similar or reduced impact from what had been originally sought by the Appellants and

could therefore be considered a minor amendment to the application, the Tribunal determined, in accordance with s. 45(18.1.1) of the *Planning Act* (“Act”), that no additional notice was required.

[6] The Tribunal qualified and heard evidence from two planners who provided comprehensive planning opinions and recommendations for conditions to the Tribunal: Darren Vella on behalf of the Appellants and Marie Leroux on behalf of the Keiths.

[7] The Subject Property is designated “Shoreline Residential” in the Township Official Plan and is similarly zoned “Shoreline Residential” in the Zoning By-law. Accessory structures, including boathouses, are permitted in this designation and zone.

[8] The planners explained that the parties had agreed to various items which can be summarized as follows:

- a. Reducing the height of the boathouse by 1.02 m.
- b. Cutting back the eaves on the boathouse so that they remain entirely on the Subject Property and do not encroach on the Keiths’ property.
- c. Directing downspouts from boathouse on to the Subject Property and to establish a culvert along the length of the boathouse structure to direct water away from the Keiths’ property.
- d. Sharing in the cost of establishing a privacy fence from the Keiths’ house to the end of the boathouse.
- e. Landscaping on the Subject Property, including removal of a tree to improve the Keiths’ view to Georgian Bay.
- f. Timing for the completion of these matters.

[9] On the basis of the revisions to the application for variances and the conditions agreed upon by the parties, the planners opined that the four-part test established by s. 45(1) of the Act was met.

[10] With regard to maintaining the general intent and purpose of the Township's Official Plan, the planners explained that there were no conformity issues as boathouses are permitted by Policy 4.1.2 and policy will be met if the conditions agreed upon between the parties are met. Ms. Leroux explained that Official Plan policy requires protection of attractiveness of the shoreline of Georgian Bay. She explained that the boathouse as currently constructed is problematic in that its height, which is perceived as two storeys, currently blocks the Keiths' view of the Bay. It was Ms. Leroux's opinion that if the height is reduced as agreed and trees removed/trimmed that the Keiths' views will be maintained and the intent of the Official Plan will be met.

[11] With regard to maintaining the general intent and purpose of the Zoning By-law, it was the opinion of Mr. Vella that the intent of the two setback standards at issue is to ensure that there is adequate separation between structures located on adjacent properties and that sufficient area is maintained for drainage control and access. It was his opinion that this intent was met with a reduced setback to 0.46 m as proposed. With respect to the lot coverage standard, Mr. Vella opined that the standard is intended to regulate for overall massing on properties and to ensure some consistency between properties. On the basis that there are boathouses in the area greater in size to the proposal by the Appellants and further, on the basis that the standard for overall lot coverage (maximum of 30%) was not exceeded (total coverage on the Subject Property will be 18%), Mr. Vella opined that the intent of the standard for lot coverage is met. Ms. Leroux agreed with Mr. Vella's analysis on these points. She additionally explained that as the boathouse sits at an angle that one corner is setback 1.3 m from the Keiths' property so the boathouse partially meets the side yard setback standard. Ms. Leroux also explained that with the eaves being cut back that the boathouse meets the eaves setback standard but for the gutters.

[12] Mr. Vella opined that the tests for desirability and minor were interrelated in this instance and that these tests were also met. He opined that the boathouse will not appear out of place from the water and there will remain sufficient amenity space in the rear yard of the Subject Property. Further, Mr. Vella opined that with the revised development, including the fact that there will be no windows on the side of the boathouse facing the Keiths' property, that no adverse impacts will arise such as loss of privacy. Ms. Leroux opined that these two tests will be met if the conditions contained in the Minutes of Settlement are met.

[13] Following the hearing of the evidence of the two planners for the parties and considering the settlement reached by the parties, the Tribunal found that the revised application for variances meets the four tests for minor variances under s. 45(1) of the Act and are consistent with the PPS. The Tribunal allowed the appeal and ordered that the three variances set out above are authorized subject to conditions that the Tribunal would set out in this decision. The Tribunal indicated at the conclusion of the hearing that it would need time to consider the conditions and the language of any such conditions to be imposed. Below are the Tribunal's findings in relation to conditions specifically.

CONDITIONS

[14] The Tribunal has the authority to impose conditions on the approval of variances to a zoning by-law that it considers advisable through the application of ss. 45(9) and 45(18) of the Act.

[15] Although the parties have entered into minutes of settlement, the Tribunal begins by noting that this document represents a private agreement amongst them. The Tribunal does not routinely approve minutes of settlement or conditions agreed upon in such a document but does consider such documents as part of the evidence before it in rendering a decision on a specific appeal. That is not to say that the minutes of settlement are not enforceable. Rather, to the extent that the Tribunal has not ordered

a condition be fulfilled that is contained in the minutes of settlement, such conditions are a private contractual matter to be resolved in another forum.

[16] Having considered the minutes of settlement, the evidence of the planners at the hearing and the planning instruments applicable in this instance, the Tribunal makes the following findings.

[17] First, the Tribunal finds that conditions relating to stormwater management and drainage are reasonable and necessary in these circumstances where there is a reduced side yard setback and the need to ensure that stormwater runoff resulting from the boathouse is properly managed on the Subject Property.

[18] Second, the Tribunal finds that the condition for the installation of a fence reasonable in the circumstances as a result of the reduced side yard setback and the evidence provided as to the need to reduce trespass and ensure privacy on the Keiths' property. However, the Tribunal cannot impose a condition on the Keiths with regards to contributing half the cost for the construction of a privacy fence. As a result, the condition set out below focuses on the Appellants' contribution alone.

[19] Third, having considered the policies of the Township Official Plan that promote the protection of the natural appearance and function of the Georgian Bay shoreline, the Tribunal finds that a condition requiring the removal of mature trees or the trimming of 7 m of limbs off trees on the Subject Property in order to increase the Keiths' views to the Bay would be contrary to the intent of the Official Plan. The Tribunal finds that the reduction in the boathouse height is sufficient in this instance to meet the policy of the Official Plan with regards to maintaining the appearance of the shoreline.

[20] Fourth, at the end of the hearing the parties provided two agreed upon options relating to the date by which the Appellants must meet any conditions imposed by the Tribunal, being either June 30, 2019 or within six months after a building permit is issued for the revised boathouse. The Tribunal finds that June 30, 2019 should provide sufficient time to meet the conditions set out above.

[21] In total therefore, the Tribunal finds that the conditions set out in the Order below are advisable for the reasons described above.

ORDER

[22] The Tribunal orders that the appeal is allowed and the following variances from Zoning By-law No. 2000-57 are authorized:

1. To reduce the interior side yard setback from 1 m to 0.46 m for the south-east corner of the boathouse.
2. To reduce the interior side yard encroachment allowance for eaves/gutters from being 0.75 m into the side yard to having the eaves with gutters and downspouts to have a minimum side yard setback from the property line of 0.28 m.
3. To increase the maximum lot coverage for accessory buildings and structures from 10% to 12.5%.

[23] Authorization of these variances is subject to the following conditions which must be fulfilled by June 30, 2019:

- a. The Appellants shall reduce the height of the boathouse by 40 inches (1.02 m).
- b. Gutters shall be installed along the eastern side of the boathouse and downspouts shall drain onto the Appellants' property.
- c. A drainage culvert shall be installed on the Appellants' property along the east side of the boathouse and grading shall ensure that drainage is maintained on the Appellants' property.

- d. The Appellants shall contribute half of the cost of installing and maintaining a privacy fence along the lot line between the Keiths' property and the Subject Property starting at the north end of the dwelling on the Keiths' property and extending to the north end of the boathouse.

"Justin Duncan"

JUSTIN DUNCAN
MEMBER

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Local Planning Appeal Tribunal

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