

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



ISSUE DATE: December 28, 2018

CASE NO(S): PL180154

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

Applicant and Appellant:	Len Vander Lugt
Subject:	Minor Variance
Variance from By-law No.:	05-200
Property Address/Description:	374 5th Concession Road East
Municipality:	City of Hamilton
Municipal File No.:	FL/A-17:422
OMB Case No.:	PL180154
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OMB Case Name:	Vander Lugt v. Hamilton (City)

Heard: October 9, 2018 in Hamilton, Ontario

APPEARANCES:

Parties

Representative

Aldershot Greenhouses

Walter Kloostra

**MEMORANDUM OF ORAL DECISION DELIVERED BY PAULA BOUTIS ON
OCTOBER 9, 2018 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The Applicant, Aldershot Greenhouses, made an Application to the Committee

of Adjustment (“Committee”) for a permanent farm labour residence consisting of three dwelling units contained within one building and other related variances under Zoning By-law No. 05-200 (“Zoning By-law”), all in connection with the construction of a barn and two proposed rear greenhouse additions to the existing nursery operation.

[2] The Subject Site is located at 374 5 Concession Road East, in the former Town of Flamborough.

[3] The Applicant brought forward two applications for minor variances. In the first, the Applicant applied for the following:

- a. To permit a permanent farm labour residence consisting of one building containing three (3) dwelling units shall be permitted whereas the Zoning By-law states that a farm labour residence must be in the form of a temporary detached dwelling;
- b. To permit the farm labour residence to be located greater than 30 metres (“m”) from the farm dwelling instead of the requirement that a farm labour residence shall be located within 30 m of the farm dwelling;
- c. To permit the proposed farm labour residence to use the easterly farm driveway servicing the farm instead of the requirement in the Zoning By-law which states that farm labour residence shall utilize the existing driveway access to the farm dwelling;
- d. The proposed farm labour residence shall have a maximum floor area of 513 square metres (“sq m”) (not including the cellar/foundation) instead of the maximum permitted floor area of 116.2 sq m.
- e. A minimum front yard of 2.7 m shall be provided for the proposed labour residence instead of the minimum required front yard of 15 m; and

f. A minimum front yard of 2.5 m shall be provided for the proposed warehouse addition instead of the minimum required front yard of 15 m.

[4] The Committee denied all the variance requests at its January 25, 2018 meeting.

[5] A second application was submitted in relation to above items b), c), e) and f), which were authorized by the Committee on August 23, 2018. As a result, the Applicant at the appeal hearing withdrew variances b), c), e) and f) proceeded only with variances a) and d).

[6] The City of Hamilton ("City") did not appear.

[7] No one sought Participant or Party status.

[8] The Applicant proffered professional planner John Ariens for the purposes of providing opinion evidence in the area of land use planning. The Tribunal qualified Mr. Ariens for that purpose.

EVIDENCE AND ANALYSIS

[9] The *Planning Act* ("Act") places several obligations on the Tribunal when it makes a decision.

[10] The Act requires that every decision of the Tribunal be consistent with the Provincial Policy Statement, 2014 ("PPS") and conform to the Greenbelt Plan.

[11] Under s. 2, the Tribunal must have regard to matters of provincial interest, including the appropriate location of growth and development.

[12] Finally, the four-part test for minor variances under the Act is the following. The proposed minor variances must:

a. maintain the general intent and purpose of the Official Plan;

- b. maintain the general intent and purpose of the Zoning By-law;
- c. be desirable for the appropriate development or use of the land; and
- d. be minor.

[13] Regarding the minor variance test, item c) relates to desirability in the public interest, not that of an applicant. Regarding item d), the main concern is unacceptable impacts.

Designations and Zoning

[14] The Subject Site is designated as “Rural” under the Rural Hamilton Official Plan (“OP”). The lands are also identified in the Protected Countryside and Specialty Crop on Schedule A of the Greenbelt Plan.

[15] The Subject Site is zoned agricultural. A “farm labour residence”, which is a defined term in the Zoning By-law, is permitted. A farm labour residence is defined as an accessory accommodation to an agricultural use on the same lot as an existing permanent principal farm dwelling, provided for full-time farm labour where the size and nature of the farm requires additional employment. Under the Zoning By-law, this accessory structure is to take form in one of three ways.

[16] Under the definition, the farm labour residence is either

- a. attached to the principal dwelling;
- b. it is detached and of temporary construction, like a mobile home; or
- c. it is a detached bunk house of temporary construction, where cooking and sanitary facilities are shared.

[17] It is from item c) that the applicant seeks relief, seeking that the structure be

permanent rather than temporary.

[18] The OP defines “farm labour residence” similarly.

[19] Farm labour residences are regulated under the Zoning By-law. Under these regulations, the Applicant requires relief from the minimum and maximum floor area permissions, which are 65.06 to 116.2 sq m, respectively. The proposal envisages a residence of 513 sq m. Other variances were approved in the second application and were not before the Tribunal.

[20] The particular structure here departs from the typical understanding of a “bunk house”, seeking to provide higher standard facilities for the workers than, for example, one large area with shared kitchen facilities and bathroom facilities. This proposal envisions three separate modules within the larger structure. Each separate module will have five bedrooms capable of housing two persons per bedroom for a total of ten persons per module. A total of 30 persons could then be housed this way. Each module will have a bathroom and kitchen to share.

[21] Currently, the Applicant has been using a mobile home to address immediate labour needs. The mobile home will be removed if the three module bunk house is approved.

[22] Mr. Ariens indicated that the Zoning By-law contemplates a temporary structure, so for example, when a crop switches and the seasonal workers are no longer needed, the temporary structure can be removed. Mr. Ariens indicated, however, that when a proposal such as this one comes forward, contemplating a significant investment and much larger operation, switching crops does not result in less labour within the enclosed greenhouse. A permanent structure is therefore more suitable than a typical bunk house, though it too could be removed if it is no longer needed by the farm operator.

[23] Mr. Ariens indicated that through site plan approval, there could be a requirement that the use can be removed if the labour is no longer required. However, Mr. Ariens

testified that such a condition had not been imposed through the site plan process in this case. In his evidence, he therefore proposed a condition in the within application to address that gap.

[24] The Applicant filed its site plan drawing, which the Tribunal understood was submitted concurrently, and was approved on September 27, 2018, allowing the additional 25,000 sq m expansion (Exhibit 1, Tab 4). The total operation will be over 50,000 sq m. The farm house residence will be where the existing tile bed is. Some temporary greenhouses will be removed and new greenhouses installed.

Provincial Requirements

[25] The Applicant included in its materials the City planning Staff Report prepared for the initial Application (Exhibit 1, Tab 7).

[26] City staff concluded that the proposal was consistent with the provisions of the PPS relating to agricultural uses, commenting that the Applicant is operating an existing greenhouse operation approximately 24,000 sq m in size, and was seeking to add another approximately 25,000 sq m. They require on-site labour for growing, packaging and shipping purposes. It was City staff's opinion that the expansion constitutes the promotion and protection of agricultural uses.

[27] Regarding the Greenbelt Plan, staff noted the plan supports and permits this operation and referenced Policy 1.2.2. Mr. Ariens concurred.

[28] It was Mr. Ariens opinion that the proposal was consistent with the PPS and conformed to the Greenbelt Plan.

[29] The Tribunal adopts these opinions and similarly concludes. It further concludes that it has appropriate regard to the requirements of s. 2 of the Act, including with reference to the protection of agriculture resources and the provision of adequate private water and sewage facilities.

Minor Variance Test

[30] City staff and Mr. Ariens were of the opinion that the general intent and purpose of the OP were maintained through this proposal. The OP supports the agricultural goals of the OP, including reinforcing and supporting the significant contribution agriculture makes to the lifestyle, environment and economy of the City and by encouraging all lands used for agricultural uses to remain in agricultural use. The policies under s. 2.1 specifically speak to greenhouses, which policies include that site plan approval is required to address building location and other servicing needs, as well as small scale retailing and speak to the use of farm labour residence.

[31] Staff initially had concerns regarding a hydrogeological study and the location of the proposed farm labour residence. However, as noted a site plan application was submitted and is now approved.

[32] To address the concern about the required temporary nature of these facilities, Mr. Ariens proposed at the hearing the following condition:

That site plan approval contain a requirement that should this farm labour residence no longer be required to house farm labourers, then the building be either demolished and removed from the property or be repurposed to another farm accessory use to the satisfaction of the City of Hamilton.

[33] The Zoning By-law seeks to have the farm labour residence be part of the farm dwelling cluster, i.e. same driveway, septic and to be accessory and subordinate. Mr. Ariens advised the existing lane and tile bed will be insufficient for this proposal. However, the farm labour residence will be part of the existing farm cluster of buildings, greenhouses, warehouses, shipping and loading. It was therefore his opinion that it met the general intent and purpose of the zoning bylaw.

[34] Mr. Ariens noted an approval for another farm labour residence nearby (Beverly Greenhouses) in which the Committee authorized a farm labour residence that was not even accessory to anything, i.e. no farm residence exists on the property at all. As a

result, he was surprised this application had been turned down by the Committee.

[35] Finally it was Mr. Ariens opinion that the proposal is desirable for the appropriate development or use of the land and is minor. He opined this is in the overall public good and interest. It supports agriculture, has no impact, is visually attractive and compatible with adjacent land uses.

[36] The Tribunal adopts the uncontested opinion of Mr. Ariens and is satisfied the proposal constitutes good planning.

ORDER

[37] The Tribunal allows the appeal and authorizes the requested minor variances to Zoning By-law No. 05-200, as reflected in Attachment 1 to this decision.

“Paula Boutis”

PAULA BOUTIS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

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ATTACHMENT 1

Local Planning Appeal Tribunal Case File No. 180154

Authorized Variances

1. To permit a permanent farm labour residence consisting of one building containing three (3) dwelling units whereas the zoning by-law states that a farm labour residence must be in the form of a temporary detached dwelling;
2. The proposed farm labour residence shall have a maximum floor area of 513 square metres ("sq m") (not including the cellar/foundation) instead of the maximum permitted floor area of 116.2 sq m.

Condition

The authorization is subject to the following condition:

3. That the Site Plan Approval contain a requirement that should this farm labour residence no longer be required to house farm labourers then the building be either demolished and removed from the property or be repurposed to another farm accessory use to the satisfaction of the City of Hamilton.