

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



ISSUE DATE: March 28, 2019

CASE NO(S): PL180599

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 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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| Applicant and Appellant: | Arthur & Karen Verway |
| Subject: | Application to amend Zoning By-law No. 26-2013 - Refusal of Application by Township of North Kawartha |
| Purpose: | To permit the tear down of a recreational cottage with a footprint of 1780 square feet and lot coverage of 9.72% and the rebuild of a permanent dwelling with a footprint of 2900 square feet and a lot coverage of 11.80%. |
| Property Address/Description: | 252 Doc Evans Road |
| Municipality: | Township of North Kawartha |
| Municipality File No.: | BL ZA-10-18 |
| LPAT Case No.: | PL180599 |
| LPAT File No.: | PL180599 |
| LPAT Case Name: | Verway v. North Kawartha (Township) |

PROCEEDING COMMENCED UNDER subsection 31(2) of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1, and Rule 26.08 of the Tribunal's Rules of Practice and Procedure

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| Request by: | Arthur Verway and Karen Verway |
| Request for: | Request for Determination |

Heard: March 15, 2019 in Apsley, Ontario

APPEARANCES:**Parties**

Arthur and Karen Verway

Representative

Kevin Duguay

DECISION DELIVERED BY THOMAS HODGINS AND ORDER OF THE TRIBUNAL

INTRODUCTION**Disposition**

[1] The Tribunal dismisses the motion, confirms its original determination that the appeal is not valid and dismisses the appeal.

Background

[2] The Township of North Kawartha ("Township") refused to approve an application submitted by Arthur and Karen Verway ("Applicant/Appellant" or "AA") for an amendment to the parent Zoning By-law ("ZBL") to permit a new permanent dwelling at 252 Doc Evans Road.

[3] The AA appealed, through a representative, the Township's refusal pursuant to s. 34(11) of the *Planning Act* ("Act").

[4] The AA's Appellant Form with attachments was provided to the Tribunal as part of the Municipal Record and was subject to an assessment of its compliance with the applicable "validity subsections" of the Act which are as follows :

Basis for appeal

(11.0.0.0.2) An appeal under subsection (11) may only be made on the basis that,

- a) the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or

conflict with a provincial plan or fail to conform with an applicable official plan; and

- b) the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans. 2017, c. 23, Sched. 3, s. 10 (1).

Notice of Appeal

(11.0.0.0.4) A notice of appeal under subsection (11) shall,

- a) explain how the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and
- b) explain how the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans. 2017, c. 23, Sched. 3, s. 10 (1).

[5] Following a preliminary screening of the Appeal in accordance with Rule 26.05 of the Tribunal's *Rules of Practice and Procedure* ("Rules"), the AA was advised by letter that: "The Tribunal has made a preliminary determination that this notice of appeal is **not valid** as it fails to provide an explanation for the appeal in accordance with the legislative requirements set out in section 34(11.0.0.0.4)(a) of the *Planning Act*."

[6] The AA challenges the Tribunal's preliminary determination and, in accordance with its right under Rule 26.08, its representative has brought a motion to dispute the determination and to have the appeal determined to be valid.

MOTION HEARING

[7] The AA's Motion was not filed pursuant to the Tribunal's Rules and specific Tribunal direction in respect to the subject Motion. The timing of the filing of the Motion did not comply with the Rules, the Motion was not served on the Township as directed by the Tribunal and the Motion does not include an affidavit setting out a brief and clear statement of the facts upon which the moving party will rely. The Motion indicates that the documentary evidence to be used at the Motion Hearing is the professional planning

opinion of a land use planner and the Appeal document filed with the Tribunal.

[8] At the Motion Hearing, the AA's representative, a consulting land use planner, referenced the Appellant Form and focussed on the manner in which the appeal addresses the matters set out in s. 34(11.0.0.0.4)(b) of the Act.

[9] The AA's representative did not make any submissions in respect to s. 34(11.0.0.0.4)(a) of the Act, which is the subsection identified to the AA by the Tribunal as relevant to its determination that the appeal is invalid.

ANALYSIS AND FINDINGS

[10] The Act requires the Tribunal to dismiss an appeal where an appellant has not provided the explanations required by the Act. It also requires the Tribunal to dismiss an appeal where the Tribunal is of the opinion that the provided explanations do not disclose: (1) how the by-law to be amended is inconsistent with provincial policy or fails to conform with a provincial plan or official plan; and (2) how the amendment is consistent and does conform with these policies. Section 34(25) of the Act reads in part:

(25) Despite the *Statutory Powers Procedure Act* and subsection (24), the Tribunal shall dismiss all or part of an appeal without holding a hearing, on its own initiative or on the motion of any party, if any of the following apply:

1. The Tribunal is of the opinion that the explanations required by subsection (11.0.0.0.4) do not disclose both of the following:
 - i. That the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan.
 - ii. The amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans...
2. The appellant has not provided the explanation required by subsection (11.0.0.0.4) or (19.0.2), as applicable.

[11] There is nothing in the Appellant Form, the material filed with the Motion or in the

AA's submissions at the Motion Hearing which explains and discloses that the parent ZBL which is proposed to be amended by the AA is, as set out in s. 34(11.0.0.4)(a) and s. 34(25)(1)(i) of the Act, inconsistent with a Provincial policy statement, fails to conform with or conflicts with a Provincial Plan or fails to comply with the applicable Official Plan ("OP"). Accordingly, the Tribunal dismisses the motion and confirms the original determination that the AA's appeal is not a valid appeal. There is also nothing in the Staff Report included in the Municipal Record (which recommends to Township Council that the parent ZBL be amended pursuant to the AA's application) addressing the consistency/compliance of the parent ZBL to Provincial and OP policy.

[12] As Member Swinkin says in *Earl v Huntsville (Town)*, 2018 CanLII 122083 (ON LPAT) in respect to a situation in which a parent ZBL is found to be consistent /compliant with Provincial and OP policy:

...it was in the discretion of Town Council to allow or deny the application (to amend the ZBL)...The reality for the Tribunal since the enactment of the Bill 139 amendments to the Act is starkly stated in s. 34(25) of the Act. The Tribunal shall dismiss an appeal if it does not address the explanations of both clauses in the Validity Subsection.

ORDER

[13] The Tribunal dismisses the AA's motion, confirms the Tribunal's original determination that the AA's appeal is not a valid appeal, dismisses the appeal and orders that the Tribunal's file on this case is to be closed.

"Thomas Hodgins"

THOMAS HODGINS
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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