

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



ISSUE DATE: September 10, 2019

CASE NO(S): PL180788

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:	Steve & Nancy Prescott
Subject:	Minor Variance
Variance from By-law No.:	06-650
Property Address/Description:	7412 Highway 11 North
Municipality:	Municipality of Temagami
Municipal File No.:	MV-18-03
OMB Case No.:	PL180788
OMB File No.:	PL180788
OMB Case Name:	Prescott v. Temagami (Township)

Heard: May 29, 2019 in Temagami, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Steve and Nancy Prescott

Self-Represented

Municipality of Temagami

G. Stephen Watt*

DECISION DELIVERED BY THOMAS HODGINS AND ORDER OF THE TRIBUNAL

INTRODUCTION

Disposition

[1] The Tribunal allows the appeal in part and authorizes, subject to conditions, three variances in an amended application.

Background

[2] Steve and Nancy Prescott (“Appellants”) appealed a decision of the Municipality of Temagami’s (“Municipality”) Committee of Adjustment (“COA”) to refuse three variances to Zoning By-law No. 06-650 (“ZBL”) which are intended to legalize, from a zoning perspective, the locations of a gazebo and wood shed on a property municipally known as 7412 Highway 11 North (“Site”). The Site is accessed from Highway 11 by a private road and is about 0.19 hectares in area with about 29 metres (“m”) of frontage on the private road and about 36 m of water frontage on Net Lake. The Site is part of a small cluster of development known as Guppyville which is north of the Temagami village area.

[3] The three variances refused by the COA in its decision are:

1. To permit a structure that is located directly adjacent to the main building where a setback of two metres is permitted (s. 6.04 e);
2. To permit a structure to be located within 0.3 m of a side lot line where a minimum of five metres is permitted (s. 7.5.2 All other Accessory Structures b); and
3. To permit an increase in lot coverage of 13% where a maximum of 8% is permitted (s. 7.5.2 The Lot h).

[4] The variances are required because two structures – a gazebo and a wood shed

– encroach into the ZBL’s required minimum side yard setback and do not have the required separation from the adjacent residential dwelling. The gazebo and the wood shed are, respectively, 0.8 m and 0.3 m from the west lot line. The lot coverage variance is required because there are numerous structures and out buildings on the Site.

[5] A Planning Report authored by Jamie Robinson and Patrick Townes, from the Municipality’s retained planning consulting firm, was available to the COA in advance of its meeting. The Planning Report indicates that not all of the variances meet the tests set out in s. 45(1) of the *Planning Act* (“Act”) and makes clear that this opinion is based on the information provided in the application package and is without the benefit of a site inspection given the remoteness of the Site from the planners’ offices.

Legislative Framework

[6] For the variances to be authorized, the Tribunal must be satisfied, pursuant to s. 45(1) of the Act, that the variances: maintain the general intent and purpose of the Official Plan (“OP”); maintain the general intent and purpose of the ZBL; are desirable for the appropriate development or use of the land, building or structure; and are minor.

[7] In making its decision, the Tribunal must also, in accordance with the Act: have regard to matters of Provincial interest; ensure that its decision is consistent with the Provincial Policy Statement, 2014 (“PPS”); and ensure that its decision conforms with, or does not conflict with, any applicable Provincial Plan which in this case is the Growth Plan for Northern Ontario (“GPNO”).

THE HEARING

Parties and Participants

[8] The Appellants were self-represented. G. Stephen Watt appeared for the Municipality.

[9] There were no requests for Party status.

[10] There was one request for Participant status and it was granted, without challenge, to Stephen Simpson who was represented by Roxanne St. Germaine. Mr. Simpson owns the property (7416 Highway 11 North) to the west of the Site and Ms. St. Germaine lives there.

Evidence

[11] Ms. St. Germaine provided some history of the area in which the Site is located and indicated that the reduced side yard setback would be adjacent to the mutual lot line between the Simpson property and the Site. She is not confident that the setbacks are being measured from the actual property line which is difficult for a layperson to determine with precision in the field. Ms. St. Germaine spoke in opposition to the approval of any variances which legalize the location of the existing structures on the Site and the key reasons for her objections are: Mr. Prescott is a contractor by trade and chose to ignore the proper process for establishing structures on the Site; the gazebo and wood shed are modest structures and should be moved or rebuilt elsewhere on the Site in compliance with the ZBL; altering the structures so that there is a side yard setback of 1.0 m is not sufficient or satisfactory; a sump pump inappropriately discharges water along the mutual property line contributing to a mosquito problem; the footings for the gazebo are in poor condition; and cedars which serve to buffer the structures from the view from the lake are in poor shape and need to be replaced or augmented.

[12] Mr. Watt called Jamie Robinson who was qualified by the Tribunal, without challenge, to provide independent expert opinion evidence in land use planning.

[13] Mr. Robinson indicated that he had conducted a site inspection in advance of the hearing and supports the proposal provided the side yard setback in Variance 2 is increased from 0.3 m to 1.0 m and the following two conditions are applied to any approval:

1. That a site plan control application be submitted, and approved by the municipality; and
2. That a survey be provided to confirm compliance with the 1.0 m setback to existing or new buildings along the west interior side lot line.

[14] Mr. Prescott, notwithstanding the variances in the original application, advised the Tribunal that the Appellants agree with Mr. Robinson's recommendation, including the increased setback in Variance 2 and the two conditions of approval. He indicated that Mr. Robinson's position represents an excellent compromise.

[15] The Tribunal, out of an abundance of caution, considers the Appellants' position to represent an amended application which differs from the original application by increasing the size of the side yard setback and reducing the quantum of Variance 2 (the original request for a setback of 0.3 m is now a request for a setback of 1.0 m). The Tribunal finds, pursuant to s. 45(18.1.1) of the Act, that the amendment to the original application is minor and no further notice is required.

[16] In the balance of this Decision, the words "variance" or "variances" means the variances in the amended application subject to the recommended conditions.

[17] Mr. Robinson testified that the variances have appropriate regard for matters of Provincial interest as set out in the Act and conform to the GPNO.

[18] Mr. Robinson indicated that the Site is considered Rural Land in the PPS. Limited residential development is allowed and the variances are for an existing permitted use that is compatible with the rural landscape. Mr. Robinson testified that the variances are consistent with the PPS.

[19] According to Mr. Robinson, each of the variances meet the tests in s. 45(1) of the Act.

[20] The variances maintain the general intent and purpose of the Municipality's OP in Mr. Robinson's opinion. The Site is within the Matabitchuan Neighbourhood and is designated Integrated Management Area. Mr. Robinson said the residential use is permitted in this location by the OP and that the gazebo and wood shed are sufficiently set back from the shoreline, do not impact the view from the lake and align with s. 2.17 of the OP which contains policies that guide development on waterfront properties.

[21] The Site is zoned Remote Residential (R2) in the ZBL and Mr. Robinson advises that the minimum side yard setback provision in the ZBL is intended to: ensure that there is an adequate distance between buildings and structures on neighbouring lots; to provide adequate access between the front and rear yards of a property; to allow for the maintenance of building faces and features from the side yard; and to assist in maintaining the character of the area when viewed from the lake. The intent of the provision in the ZBL which requires a separation between accessory and main buildings is to ensure adequate access between the structures, to limit the massing of development which, in this case, could negatively impact a view from the lake, and perhaps for health and safety reasons, according to Mr. Robinson. He is satisfied, in this particular situation and context, that the setback and separation variances maintain the general intent and purpose of the ZBL and said that a 1.0 m side yard on the west side is sufficient for maintenance activities, allows reasonable access between the front and rear yards on that side of the Site and that the east side yard is larger and provides extensive front to rear yard access. The proposed reduction in the separation between accessory and main buildings does not create an overly wide structure and the massing is compatible and not out of keeping with the neighbourhood.

[22] Mr. Robinson testified that the lot coverage provision in the ZBL is intended to ensure an appropriate relationship between the size of a property and the amount of development on it. He said the Site does not appear to be over-developed and that a 13% lot coverage meets the general intent and purpose of the ZBL, is acceptable in this situation and setting and is not out of character with the area.

[23] The variances will not change the existing land use and Mr. Robinson believes the relief requested can be considered both desirable and minor. The structures and conditions resulting from the variances will have acceptable impacts and align with the neighbourhood character.

ANALYSIS AND FINDINGS

[24] Having considered all of the evidence and submissions, including the photographs of the area, the context of the Site and the input from the witnesses, the Tribunal finds that the variances maintain the general intent and purpose of the OP and the ZBL, are desirable for the appropriate development or use of the land, building or structure and are minor. This finding relies on the advice of Mr. Robinson.

[25] The variances will require some physical alterations to the structures as they exist today and once done will make them compliant with the ZBL as varied. The Appellants are agreeable to making the required alterations, submitting a site plan control application to the Municipality for approval and confirming the property lines and post alteration setbacks with a survey.

[26] The reduced side yard setback is adjacent to a lot line across which the neighbour has reasonably large accessory buildings. These accessory buildings plus some modest vegetation will serve to separate the Site, with its reduced side yard setback, from the neighbouring residential dwelling which is some distance away. The variances, and the resulting structures on the Site, will not unreasonably impact any neighbours, are for a permitted residential use and are acceptable in the context. The Tribunal thanks Ms. St. Germaine for her attendance and presentation at the hearing and notes that the conditions of approval require a survey which will satisfy her concern that the westerly property line, and the setbacks from it, be accurately identified.

[27] The Tribunal does not condone the Appellants' actions in building without the necessary approvals from the Municipality and, as is its usual practice, has assessed this matter as if the structures were not built.

[28] In arriving at its Decision, the Tribunal had regard to matters of provincial interest and is satisfied that the variances are consistent with the PPS and conform with the GPNO.

ORDER

[29] The Tribunal orders that the appeal is allowed in part and authorizes the following variances to Zoning By-law No. 06-650 subject to the conditions set out below:

VARIANCES

1. To permit a structure that is located directly adjacent to the main building where a setback of two metres ("m") is permitted (s. 6.04 e) of ZBL);
2. To permit a structure to be located a minimum of 1 m from the west interior side lot line where a minimum of 5 m is permitted (s. 7.5.2 All other Accessory Structures b); and
3. To permit an increase in lot coverage of 13% whereas a maximum of 8% is permitted (s. 7.5.2 The Lot h of ZBL).

CONDITIONS

1. That a site plan control application be submitted and approved by the Municipality; and
2. That a survey be provided to confirm compliance with the 1.0 m setback to existing or new buildings along the west interior side lot line.

“Thomas Hodgins”

THOMAS HODGINS
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

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248