

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



ISSUE DATE: May 17, 2019

CASE NO(S): PL180878

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

Appellant:	Larry Tompkins
Applicant:	Ed and Marilyn Roberts
Subject:	Minor Variance
Variance from By-law No.:	Zoning By-law 06-10
Property Address/Description:	1221 Maebar Road
Municipality:	Township of Minden Hills
Municipal File No.:	PLMV2018058
LPAT Case No.:	PL180878
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LPAT Case Name:	Larry Tompkins v. Minden Hills (Township)

Heard: May 3, 2019 by telephone conference call

APPEARANCES:

Parties

Representative

Larry Tompkins

Self-represented

Ed and Marilyn Roberts

Ed Roberts

MEMORANDUM OF ORAL DECISION DELIVERED BY THOMAS HODGINS ON MAY 3, 2019 AND ORDER OF THE TRIBUNAL

INTRODUCTION

Disposition

[1] After considering the evidence and submissions, the Tribunal allows the Appeal in part and authorizes the variance subject to conditions.

Background

[2] Ed and Marilyn Roberts (“Applicants”) submitted an Application to the Township of Minden Hills (“Township”) for a variance to s. 5.2 of Zoning By-law No. 06-10 (“ZBL”) to permit a setback of 26 metres (“m”) from the High Water Mark for a new dwelling at 1221 Maebar Road (“Site”) whereas 30 m is required. The Site has “frontage” on Twelve Mile Lake and the new dwelling is intended to replace an existing dwelling, a storage building and two rental buildings. The Site is designated Rural Settlement Area in the Township’s Official Plan (“OP”) and is subject to the Waterfront policies. The Site is zoned Recreational Commercial (C3) in the ZBL.

[3] The Township’s Committee of Adjustment (“COA”) approved the variance subject to three conditions.

[4] Larry Tompkins appealed the COA decision pursuant to s. 45(12) of the *Planning Act* (“Act”). In his Appellant Form, Mr. Tompkins indicates that the COA decision fails to conform to the OP, fails to maintain the general intent and purpose of the OP and ZBL and will set a dangerous precedent for future decisions. He expresses support for the enforcement of the 30 m setback from the Lake’s High Water Mark.

LEGISLATIVE FRAMEWORK

[5] In order for the variance 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 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.

[6] 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.

THE HEARING

[7] Mr. Tompkins and Ed Roberts participated in the hearing which was held by telephone conference call (“TCC”).

[8] Ian Clendening, a Planner employed by the Township, also voluntarily participated in the TCC. He advised the Tribunal that he was asked by the Applicants to participate, that he was not accepting any consideration from them and that he considers himself “a friend of the Tribunal.” In advance of the TCC, Mr. Clendening provided the Tribunal with a copy of his *Cirriculum Vitae* (“CV”) and an executed Acknowledgement of Expert’s Duty form.

[9] No one else participated in the TCC and, accordingly, there were no requests for Party or Participant status.

[10] Messrs. Tompkins and Roberts advised that they had resolved their differences and agreed that it would be appropriate for the Tribunal to approve the variance subject to the three conditions applied by the COA in its decision and an additional new condition which requires the Applicants to undertake shoreline stabilization work and to plant native species along the High Water Mark.

[11] Messrs. Tompkins and Roberts consented to the Tribunal questioning and receiving evidence and opinion from Mr. Clendening. After questioning Mr. Clendening about his experience and reviewing his CV, and with the concurrence of Messrs. Tompkins and Roberts, the Tribunal qualified Mr. Clendening to provide independent

expert opinion evidence in land use planning.

[12] Mr. Clendening advised that he had inspected the Site and authored a Staff Report to the COA on the Application. The Staff Report is included in the appeal record and it recommends two of the conditions of approval applied by the COA in its decision.

[13] Mr. Clendening recommended that the Tribunal approve the variance subject to four conditions – the three applied by the COA in its decision plus a fourth condition, requiring shoreline stabilization and planting, as negotiated by Messrs. Tompkins and Roberts in settling the Appeal.

[14] Mr. Clendening advised that the variance, subject to the four conditions, satisfies the tests for the authorization of a minor variance as set out in s. 45(1) of the Act in that it maintains the general intent and purpose of the OP, maintains the general intent and purpose of the ZBL, is desirable for the appropriate development or use of the land, building or structure and is minor. He also advised that the approval of the variance, with the four conditions, would be consistent with the PPS and would represent good planning.

[15] Mr. Clendening advised that no Provincial Plan applies to the Site.

ANALYSIS AND FINDINGS

[16] The Tribunal commends Messrs. Tompkins and Roberts for their efforts to settle this matter.

[17] The Tribunal also commends Mr. Clendening for his decision to voluntarily participate in the TCC. His participation was professional, of much assistance to the Tribunal and represents excellent customer service to the two residents of his Township who had worked out a settlement.

[18] In this Appeal, the Act states that the Tribunal may dismiss the Appeal and may

make any decision the COA could have made. Further, s. 11(2) and s. 12(1) of the *Local Planning Appeal Tribunal Act* (“LPATA”) give the Tribunal the authority to hear and determine all questions of law or of fact with respect to all matters within its jurisdiction, unless limited by the LPATA or any other general or special Act, and to make orders or give directions as may be necessary or incidental to the exercise of its powers under LPATA or any other general or special Act.

[19] Based on the evidence and submissions, the Tribunal finds that it is appropriate to allow the Appeal in part and to authorize the variance subject to the recommended four conditions. In making this finding, the Tribunal accepts and relies upon the uncontested expert planning evidence of Mr. Clendening and acknowledges the support of the Appellant and the Applicants.

[20] Based upon the unchallenged and uncontroverted planning evidence, the Tribunal finds that the variance, with conditions, maintains the general intent and purpose of the OP and the ZBL, is desirable for the appropriate development or use of the land, building or structure and is minor.

[21] In arriving at its Decision, the Tribunal had regard to matters of Provincial interest and finds that its Decision is consistent with the PPS.

[22] The Tribunal notes that its Decision aligns with that of the Township’s COA and adds an additional condition requiring certain shoreline stabilization work and plantings as requested by the Appellant and the Applicants.

[23] With the agreement of Messrs. Tompkins, Roberts and Clendening, the timing for the shoreline stabilization work in the negotiated settlement is adjusted in the Order from “... prior to construction of the new dwelling” to “prior to occupancy of the new dwelling”.

[24] In the interest of fairness, the Tribunal has also adjusted in the Order the deadline for the construction of the new dwelling as set out in condition 3 of the COA

decision to be 18 months from the Tribunal's Decision as opposed to 18 months from the COA decision.

[25] To be clear, the reasons why the Tribunal is authorizing the variance with conditions are: a qualified land use planning witness advised that the proposal meets all of the applicable tests for approval; the planning witness' evidence and opinion were uncontroverted; the Appellant and the Applicants support the planning witness' opinion and recommendation; the Tribunal found Messrs. Tompkins, Roberts and Clendening to be forthright and well prepared and briefed on the particulars of the case at hand; and the evidence, submissions and recommendations, when filtered through this Member's experience and background, are sound and persuasive. The shoreline stabilization work and native plantings are a positive addition to the project.

ORDER

[26] The Tribunal orders as follows:

- A. the Appeal is allowed in part;
- B. the variance set out in Paragraph 2 of this Decision is authorized subject to the following conditions:
 1. The approval of the minor variance granted shall only relate to the construction of a new dwelling which shall proceed substantially in accordance with the relevant drawings/plans submitted August 28, 2018 and put before the COA on September 24, 2018 and forming part of its decision;
 2. That the outbuildings identified as being removed in the above noted plans be removed prior to occupancy being granted;
 3. That the building construction related to the minor variance shall be

completed within a period of 18 months after the date of issuance of this Tribunal Decision, failing which the approval shall be deemed to be refused. This condition will be fulfilled upon completion of the first Building Inspection; and

4. That approximately 184.6 m (600 feet) of shoreline along the High Water Mark of the property be stabilized with river rock and larger boulders pursuant to a Ministry of Natural Resources and Forestry permit approval prior to occupancy of the new dwelling. Further, that plantings of native plant species along the High Water Mark be implemented after shore line stabilization within a three year period and designed by a person qualified to determine native plant species.

[27] This Member may be spoken to should any issues arise in respect to the implementation of this Order.

“Thomas Hodgins”

THOMAS HODGINS
MEMBER

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

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