

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



ISSUE DATE: July 16, 2019

CASE NO(S): PL180913

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:	Ann Johnston
Subject:	Minor Variance
Variance from By-law No.:	A2000-07
Property Address/Description:	Island B484
Municipality:	Township of The Archipelago
Municipal File No.:	A19-18
OMB Case No.:	PL180913
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OMB Case Name:	Johnston v. The Archipelago (Township)

Heard: May 9, 2019 by telephone conference call

APPEARANCES:

Parties

Township of the Archipelago

Ann Johnston

Counsel

C. Tzekas

Self-represented

MEMORANDUM OF ORAL DECISION DELIVERED BY C.J. BRYSON ON MAY 9, 2019 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This scheduled Pre-hearing Conference (“PHC”) by Telephone Conference Call (“TCC”) was converted to a settlement conference at the request of the parties to the appeal of Ann Johnston (“Appellant”) from the denial of her variance application for relief from the Township of the Archipelago (“Township”) Zoning By-law No. A200-07 for her Wynn Island B-484 property in Georgian Bay.

[2] In particular, Ms. Johnston applied for a variance in the front yard setback for a new deck to be constructed on a sleeping cabin. The original application requested a reduction in the 7.5 metre (“m”) front yard setback to 5.18 m to allow for a 23.5 square m (“sq m”) deck facing the lake. The Township’s Committee of Adjustment (“CoA”) denied the application upon the Township planning report of Cale Henderson dated November 16, 2018, and submissions of the Appellant and an objecting neighbouring island owner, Huntly Christie. The CoA accepted the opinion of Mr. Henderson that the proposed deck would not engage a minor variance or be appropriate development in view of the Zoning By-law requirements and Official Plan policies limiting visual impact of structures in the front yard of island properties in the zone.

[3] The proposed settlement envisages a much smaller deck, which would require a variance in the front yard setback from 7.5 m to 5.94 m and would allow for a deck area of only 12.68 sq m. The proposal also requires plantings around the front of the deck and the installation of glass deck guards as may be required by the Township Chief Building Official upon a review of the proposed plans for building permit purposes. As the revised submission is minor in nature for purposes of s. 45(18.1.1) of the *Planning Act*, the Tribunal determined that no further notice of the amended application was required pursuant to s. 45(18.1) of the Act.

[4] In support of the settlement, the Township provided an Affidavit of Cale Henderson dated May 8, 2019 and the Appellant provided the Affidavit of John Jackson,

also dated May 8, 2019. The affidavits were marked Exhibits 1 and 2 respectively. The required Acknowledgements of Expert Duty and curriculum vitae were provided within the jointly submitted Document Book, which was accepted and marked as Exhibit 4. Mr. Henderson and Mr. Jackson were each qualified without objection to provide expert land use planning evidence to the Tribunal in support of the settlement, through their affidavits and oral evidence during the TCC.

[5] The Affidavit of Service for this TCC was found within the joint Document Book but copied and marked separately as Exhibit 3.

[6] Mr. Henderson opined that the revised application of the Appellant met the four tests in s. 45(1) of the *Planning Act* for a variance, being minor in nature, representing appropriate development of the land and maintaining the general purpose and intent of the Zoning By-law and Official Plan policies for the subject lands and zone area. He submitted the reduction in size of the proposed deck and its increased setback preserved waterfront access and reduced visual impacts from the water to an acceptable degree. Mr. Jackson concurred in this opinion on behalf of his client, the Appellant. They also concurred in the opinion that the proposed settlement was consistent with the Provincial Policy Statement, 2014 ("PPS") and was respectful of matters of provincial interest as outlined in s. 2 of the *Planning Act*.

[7] Upon the uncontested evidence of the parties, the Tribunal approved the settlement in the form of the variance depicted in the revised site plans in Exhibit 4. The Tribunal accepted that the proposed variance met the tests in s. 45(1) of the *Planning Act*, was consistent with the PPS regarding rural and recreational properties and otherwise represented good planning due to the lack of adverse impacts to neighbouring property owners and recreational passersby.

ORDER

[8] The Tribunal ordered the revised variance authorized as depicted in the revised

site plans in Exhibit 4, including the provision of depicted plantings and glass deck guards as may be required by the Township Chief Building Official.

"C.J. Bryson"

C.J. BRYSON
MEMBER

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Local Planning Appeal Tribunal

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