

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



ISSUE DATE: February 25, 2020

CASE NO(S): PL180938

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

Appellant:	Andrea McCormick
Subject:	By-law No. BL 2018-57
Municipality:	Township of McNab-Braeside
LPAT Case No.:	PL180938
LPAT File No.:	PL180938
LPAT Case Name:	McCormick v. McNab-Braeside (Township)

Heard: October 31, 2019 in McNab-Braeside, Ontario

APPEARANCES:

Parties

Counsel

Andrea McCormick	Self-represented
Township of McNab-Braeside	E. Blanchard N. Abraham
Grant Armstrong and Karen Wilson	Self-represented
Keith and Jennifer Christie	Self-represented
Borden and Joyce McLachlan	Self-represented
William Morton	Self-represented
Sean Conner and Jennifer Sutherland	Self-represented

DECISION DELIVERED BY C.J. BRYSON AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Andrea McCormick (“Appellant”) appealed to the Tribunal from an amendment to the Township of McNab-Braeside (“Township”) Zoning By-law No. 2010-49 (“ZB”), which legalized the use of a four-acre rural lot and dwelling along the Madawaska River as an addiction recovery home. Zoning By-law amendment No. 2018-57 (“ZBA”) added a definition to the ZB for “wellness group home”, permission for this use at 240 McLeod Road (“Subject Lands”) within the Rural zone and amended Schedule A to the ZB to reflect this site specific permission.

[2] The Appellant appealed the ZBA on the basis that it is inconsistent with the Provincial Policy Statement, 2014 (“PPS”) and does not conform to the Township’s Official Plan (“OP”). Several nearby property owners were granted party status under the Appellant’s appeal as were the Applicants and owners of Blue Skies Recovery Addiction Treatment Wellness Centre (“Blue Skies”), Sean Connor and Jennifer Sutherland under the Township’s defence to the appeal.

[3] The ZBA specifically rezones the Subject Lands from Rural to Rural-Exception 37, to permit the existing dwelling and lands to continue to be used for an addiction recovery home, or a newly defined “wellness group home”. Wellness group home means; “a single residence in which up to 9 persons over the age of 18 (excluding staff), temporarily or permanently reside under responsible supervision where indoor and outdoor programs and activities are offered that promote mental, emotional, and physical healing for healthy living.”

[4] This appeal is subject to the Bill 139 *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1 (“LPATA”) hearing process and Bill 139 *Planning Act*, R.S.O. 1990, c. P.13 (“*Planning Act*”) appeal grounds claimed, as having been set down for a hearing on the merits prior to the Bill 108, *More Homes, More Choice Act, 2019*, S.O. 2019, c. 9 amendments to LPATA and the *Planning Act* came into force on September

3, 2019. A one-day hearing was held on October 31, 2019 to allow for oral submissions of the parties. Those submissions and the filed written record of the parties form the basis of this Decision.

PLANNING EVIDENCE AND ARGUMENTS

[5] The Appellant argued in her written and oral submissions that the ZBA is inconsistent with the PPS for it does not respect existing laws regarding “group homes”, as defined in the ZB to require provincial licencing; the definition of “group home” in the *Municipal Act, 2001*, S.O. 2001, c. 25 (“*Municipal Act*”), and; as that term is utilized by the Municipal Property Assessment Corporation (“MPAC”) for tax assessment purposes, pursuant to the *Assessment Act*, R.S.O. 1990, c. A.31 (“*Assessment Act*”).

[6] None of these definitions preclude the addition of a new definition of “wellness group home” to the ZB or that use in the Rural zone, as authorized by s. 34 of the *Planning Act*. Neither the definition of “group home” nor that of “wellness group home” in the ZB is prescribed by the *Municipal Act* or the *Assessment Act*, but are terms determined by Council to reflect an appropriate use in all residential ZB zones and for the Subject Lands, respectively. Neither the *Municipal Act* nor the *Assessment Act* authorize ZB definitions or uses. These definitions and uses are subject only to the *Planning Act*, the PPS, applicable provincial plans, applicable official plans, and applicable human rights obligations, none of which restrict the definition of “wellness group home” or that use on the Subject Lands.

[7] Addiction recovery homes such as Blue Skies do not require licencing by the Province of Ontario. The Appellant’s concern for regulation and oversight of Blue Skies, similar to that for other types of group home environments, is not within the jurisdiction of this Tribunal to assess. In this case, the Tribunal is limited to assessing the planning merits of the ZBA in view of the *Planning Act*, PPS and Township OP, per the Appellant’s appeal grounds. No provincial plans apply to the Subject Lands.

[8] The Appellant also submitted that PPS Policy 1.2.1 is violated by the ZBA for it does not result from an integration of similar services across municipalities within the region and that the ZBA violates PPS Policy 1.1.4.2 as representing growth outside of a rural settlement area. The PPS does not require the establishment of a use through a ZBA to result from collaboration with other municipalities. This may be an aspirational goal for large institutional uses or shared service uses but is not relevant to the establishment of a new residential use in an existing dwelling, within a plan of subdivision, with existing municipal residential services. This new use also does not represent growth as contemplated by PPS Policy 1.1.4.2. The existing dwelling and Subject Lands remain unchanged by the change in type of residential use authorized by the ZBA. In regard to PPS compatibility policies, the parties did not produce any evidence to demonstrate a strain on existing residential services to the Subject Lands or of any incompatibility of the new use arising from the ZBA with their residential uses on neighbouring lands.

[9] Similarly, OP Policy 1.7 regarding compatibility is not implicated in any way by the continued residential use of the Subject Lands. Speculation alone regarding fire safety, septic capacity, building permit requirements and risks to public safety are not a sufficient basis for a finding of incompatibility of use of the Subject Lands in relation to the residential use of neighbouring lands. Speculation of a breach of the ZBA permitted use as a “wellness group home” is also without any supporting evidence. The Township canvassed and was satisfied from responses of the Fire Chief and Chief Building Official that they had no concerns with the ZBA. The Appellant and parties have avenues of enforcement through the Township, its Fire Chief, Chief Building Official and By-law Enforcement Officer should any of the feared situations arise in the future. The evidence provided by the Township was clear and uncontroverted in regard to building permit, fire safety and septic capacity sufficiency. There have been no alterations to the home since receiving its original building permit and septic approval and no alteration to the use of the lands since the ZBA and a compliance visit with the Fire Chief.

[10] OP Policies 3.1.6 and 3.3 speak to growth in rural designations and the permission for commercial services in the Rural zone to serve the needs of Rural zone residents. As per the reflective PPS policies, the OP policies regarding growth do not apply to the ZBA permissions granted, but only to newly established residential or other uses in the Rural designation and zone. Commercial uses are referenced in OP Policy 3.1.7:

commercial, including highway-commercial, and industrial uses permitted in the Rural designation shall be restricted to those uses serving the needs of the rural economy. General examples of such uses include welding shops, woodworking shops, pottery kilns, handicraft shops, general stores, other non-intensive industrial operations requiring minimal service, industries using local resources or raw materials, uses which are basic components of the local rural economy, such as farm implement dealers, garden supply centres and plant nurseries.

The policy examples are a non-exhaustive list but more importantly, the acceptance of a fee for residential use and the provision of some services within the residence does not change the ZBA permitted residential use into a commercial use.

[11] The Tribunal accepts the submissions of the Township that the ZBA does not represent a commercial use as contemplated by the OP or otherwise under planning law. Therapeutic activities and a fee to reside do not change what is a residential use into a commercial use, as generally represented by an owner occupying a structure and selling products or services therefrom to the public. Residential use is determined not by who lives in a residence but how they live there—that they operate as a household, undertaking normal residential and outdoor leisure activities, while in occupancy. See *Barrie (City) v. Brown Camps Residential & Day Schools*, 2 O.R. (2d) 337 (ONCA); *Tepper v. 5111825 Ontario Ltd.*, [2001] O.T.C. 521 (ONSC); *Good v. Waterloo (City)*, [2003] O.T.C. 913 (ONSC), and; *Pathways to Independence v. Sophiasburgh (Ward)* (2002), 41 MPLR (3d) 153. Further, no evidence was produced by the Appellant or the parties of any need for expanded parking, landscaping, buffering or other mitigations that may be required for residential and commercial uses to co-exist.

[12] The further OP policies raised by the Appellant and parties regarding Environmental Protection areas do not apply to the Subject Lands for they are not designated within an Environmental Protection area. Further, no evidence was produced by the Appellant or the parties that the use of the Subject Lands authorized by the ZBA would produce any negative impact on the nearby river, flora and fauna.

[13] Mr. Connor provided uncontroverted evidence for Blue Skies as to the lack of structural changes to the existing dwelling and a meeting with the Township Fire Chief regarding a fire safety plan. The dwelling has eight rooms, with five bedrooms, though used differently by the prior owner. The services provided to residents, who engage in normal residential activities of cooking, cleaning and recreation, include a psychotherapist, nurse practitioner and a registered nurse. There are no services provided to the general public.

[14] For the Township, Bruce Howarth provided a supportive Planning Report, a Responding Appeal Record affidavit and a further responding affidavit to the written submissions of the new parties to the proceeding, filed after they obtained status at the case management conference. Mr. Howarth was qualified by the Tribunal without objection to provide that expert land use planning opinion evidence in support of the ZBA. In sum, Mr. Howarth opined that the ZBA permitted "wellness group home" use is a residential use akin to that of the permitted residential use of "group home" but without provincial regulation. He opined that a fee for residential use and provision of some services to residents was irrelevant to the use categorization, for it is the nature of the use, living as a household in a residential dwelling, that determines its use categorization.

[15] He emphasized that refusing to provide zoning in the circumstances would violate PPS Policy 1.4.3 which requires municipalities to provide for a range of housing including for those with special needs such as the recognized mental health disability of addiction. He continued that reflective OP policies recognize special needs housing such as group homes as special needs residential uses. He considers the ZBA a

technical amendment for Blue Skies did not fit within the existing “group home” ZB definition. Mr. Howarth also emphasized the ZBA and permitted use does not alter the dwelling, Subject Lands or their use in a serviced plan of subdivision.

[16] It is Mr. Howarth’s opinion that refusing to approve the ZBA would also violate PPS Policies 1.4.3 and 4.6 regarding non-discrimination in planning, as well as s. 35 of the *Planning Act*, s. 15(1) of the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code*, for it would deny the permission of use on the basis of occupant characteristics and lack familial relationship instead of upon valid planning grounds. The Tribunal accepts this opinion for these laws recognize a lack of familial relationship and addiction as a disability as grounds protected from discrimination in the provision of planning public services. It is a well established principle that good planning precludes planning around the personal or protected characteristics of people who may occupy the buildings or land. See *Bell v. R.*, [1979] 2 S.C.R. 212 and *Advocacy Centre for Tenants Ontario v. Waterloo (Regional Municipality)*, 64 O.M.B.R. 283.

CONCLUSION

[17] The Township authorized the new definition of “wellness group home” and the ZBA in consideration of the use of the Subject Lands by the Blue Skies residents and the Township’s *Planning Act* and Human and Charter rights obligations, which are reflected in the PPS and OP policies. No evidence was provided by the Appellant or parties to detract from the residential use of the Subject Lands by Blue Skies’ residents and no PPS, OP or other legal basis was put forward to the Tribunal that would limit the discretion of the Township in this regard.

[18] The ZBA respects the *Planning Act*, is consistent with the PPS and conforms to the OP.

ORDER

[19] The appeal is dismissed.

“C.J. Bryson”

C.J. BRYSON
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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