

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



ISSUE DATE: January 18, 2021

CASE NO(S):

PL200252

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:	Gordon Kemp
Subject:	Minor Variance
Variance from By-law No.:	2010-040
Property Address/Description:	10 Huronia Parkway
Municipality:	Town of Collingwood
Municipal File No.:	D132220
LPAT Case No.:	PL200252
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LPAT Case Name:	Kemp v. Collingwood (Town)

Heard: January 13, 2021 via video hearing

APPEARANCES:

Parties

Counsel

Gordon Kemp and Teza Lawrence Matthew J. Hodgson

**MEMORANDUM OF ORAL DECISION DELIVERED BY R.G.M. MAKUCH ON
JANUARY 13, 2021 AND ORDER OF THE TRIBUNAL**

[1] Gordon Kemp and Teza Lawrence (“Applicants/Appellants”) wish to construct a new single-detached dwelling on the subject property known municipally as 10 Huronia Pathway (“subject property”) in the Town of Collingwood (“Town”). The subject property is currently vacant and has a total lot area of 4,400 square metres (1.08 acres).

[2] They applied to the Committee of Adjustment (“Committee”) for authorization of the following variance:

To reduce the required setback from the 178.0 m Canadian Geodetic Datum elevation to a main building from 15.0 m to 7.9 m ** see planning report

[3] The application was refused by the Committee resulting in this appeal.

[4] It must be noted that an appeal to this Tribunal pursuant to s. 45 of the *Planning Act* (“Act”) is a hearing *de novo* and the onus of establishing that the four tests under s. 45(1) of the Act have been met is on the Applicants/Appellants. The four tests require the Applicants/Appellants to satisfy the Tribunal that the variances:

1. maintain the general intent and purpose of the Official Plan;
2. maintain the general intent and purpose of the zoning by-law;
3. are desirable for the appropriate development or use of the land building or structure; and
4. are minor.

[5] In addition, as with any decision that affects a planning matter, the Tribunal must have regard to the matters of provincial interest as set out in s. 2 of the Act and, in accordance with s. 3(5) of the Act, must determine if the requested variance and consent are consistent with the Provincial Policy Statement, 2020 (“PPS”).

[6] The only evidence before the Tribunal consists of the testimony of Krystin Rennie, the land use planning consultant for the Applicants/Appellants. Ms. Rennie is a member of the Canadian Institute of Planners and a Registered Professional Planner in the Province of Ontario.

[7] It is noted that the Nottawasaga Valley Conservation Authority (“NVCA”)

supported the requested setback in correspondence dated March 23, 2020 and furthermore, that the Town's Planning Department recommended approval of the application to the Committee.

[8] The Tribunal also notes that a Participant Statement was filed with the Tribunal by David Finbow dated December 7, 2020 on behalf of Kelly and Claudio Ciaravella, who reside at 42 Silver Crescent, located immediately to the west of the subject property. Mr. and Mrs. Ciaravella were granted participant status.

[9] Ms. Rennie provided the Tribunal with a comprehensive overview of the application as it relates to the relevant planning documents. She also attended the site on August 5, 2020 and provided the Tribunal with visual evidence showing the subject property and its surroundings. She explained that Huronia Pathway defines the east boundary of the subject property with a single detached dwelling on the east side of Huronia Pathway, there is residential development known as Lakeside Point Development to the west, Georgian Bay is immediately to the north and there is a single detached dwelling to the south.

[10] The visual evidence shows that the subject property is heavily vegetated with a mix of mature trees and brush. There is also a drainage course that bisects the subject property and outlets to Georgian Bay. The majority of the subject property is low lying and under the 178 metres ("m") contour with the higher ground being in the southeast corner of the lot, which is the proposed location of the proposed dwelling.

[11] The application requested a reduction in the setback from the 178 m Canadian Geodetic Datum Elevation ("CGDE") from 15 m to 7.9 m for the west portion of the proposed dwelling. This represents the one in 100 years flood line.

[12] The application was supported by a Natural Hazard Study, a Fluvial Geomorphological and a Meander Beltwidth Assessment.

[13] The lands are designated "Residential" under Schedule A - Land Use Plan in The

Town of Collingwood Official Plan and “Settlement” under Schedule 5.1 - Land Use Designations in the County of Simcoe Official Plan.

[14] The lands are zoned “Residential Second Density (R2)” under the Town of Collingwood Zoning By-law No. 2010-040.

[15] Ms. Rennie explained that the 7.1 m reduction is required only for the west side of the proposed building. The reduction required at the east side of the proposed building is 10.9 m.

[16] The Tribunal is satisfied based on the uncontroverted evidence proffered by Ms. Rennie that the four tests under s. 45(1) of the Act have been met by this application and that the appeal should be allowed for the reasons that follow.

[17] Firstly, the Tribunal is satisfied that the variance maintains the general intent and purpose of the County of Simcoe Official Plan, which designates the subject property “Settlement”. The plan directs a significant portion of growth and development to “Settlements” areas where such development can be effectively serviced, with a particular emphasis on primary settlement areas under Section 3.1.1.

[18] Section 4.5.17 of the plan also provides that “any development or site alteration permitted in the flood plain shall require written approval from the Conservation Authority or appropriate authority, in consultation with the local municipality”. The proposed development is not within the flood plain, but written approval has been received from the NVCA to permit the building to be closer to the 178 m CGDE.

[19] Section 4.5.18 provides that in the absence of detailed flood plain analysis, a development applicant may be required to provide a flood plain study as a prerequisite to any development, prepared to the satisfaction of the Conservation Authority or other qualified professional, and the local municipality.

[20] The Shoreline Hazard Study has outlined that the risk of a flood event impacting

the development is extremely low and that the proposed design standard provides more than adequate protection for the subject structure. The NVCA reviewed the proposal and its supporting documents, and in accordance with its mandate and delegated responsibility from the Province to represent provincial interests regarding natural hazard identified in Section 3.1 of the PPS, it concluded that it is satisfied with the technical documents submitted to them, have no objection to the minor variance application and are in a position to issue a permit once approved.

[21] The Tribunal is also satisfied that the variance maintains the general intent and purpose of the Town of Collingwood Official Plan, which designates the subject property “Residential”. The “Residential” designation provides for a variety of housing opportunities and associated uses, within a broad range of residential densities, in order to meet the Town’s long-range housing needs and the complete community. Lands designated “Residential” are to be used predominantly for a variety of residential uses, including low, medium and high-density housing.

[22] Section 3 of the plan outlines the goals and objectives that provide the framework for directing growth in a logical and orderly manner while safeguarding the Town’s environmental and economic well-being and small-town atmosphere.

[23] Under Section 3.9.1.3, the plan provides that development shall occur in a manner that will protect property and the health and safety of the public from natural hazards such as flooding and erosion. Flood plain management shall occur on a watershed management basis giving due consideration to the upstream, downstream and cumulative effects of the development.

[24] Section 3.10 states that the Town shall consult with the NVCA, which functions as the Town’s technical advisors, during the review and approval of a variety of applications for development inlands that are determined to have Natural Heritage and/or Natural Hazard Features. In addition to other relevant approvals, all development within the areas regulated under the *Conservation Authorities Act* shall be subject to the permit process administered by the NVCA.

[25] The subject property is adjacent to Georgian Bay and considered a natural hazard feature. The proposed building site is located on the south east portion of the property and is unable to meet the 15 m setback from the 178 m CGD elevation and allow the owners to access the property and protect existing buffering vegetation on the property.

[26] The subject property is susceptible to flooding and development on the property is subject to the Regulatory Flood Standard, which require a minimum setback of 15 m from the 1:100 Year flood elevation of 178 m CGDE. An additional set back may be required to satisfy the NVCA requirement for wave up rush protection.

[27] The Natural Hazard Study submitted to the Town and the NVCA to address the inability to maintain the 15 m setback from the 1:100 year flood elevation showed that the proposed reduction of the setback did not impact the ability to protect the health and safety of the public or the proposed structure.

[28] The NVCA were satisfied that their mandate from the Province to represent provincial interests regarding natural hazards identified in Section 3.1 of the PPS, 2014 and as a regulatory authority under Ontario Regulation 172/06 was satisfied and that it is in a position to issue a permit.

[29] The Tribunal is satisfied that the variance requested maintains the general purpose and intent of the Town Official Plan relating to compatibility, buffering and the shoreline management policies.

[30] Secondly, the Tribunal is satisfied that the variance sought maintains the general intent and purpose of Zoning By-law No. 2010-040, which zones the subject property "Residential Second Density (R2)" and permits duplex, single detached residential dwellings and semi-detached residential dwellings, boarding homes and community gardens.

[31] Section 4.12.1 of the by-law requires that the minimum opening elevation of all

buildings shall be 0.5 m above the centerline of an abutting street. Ms. Rennie explained how this requirement was met.

[32] Section 4.12.2 of the by-law states that where a property abuts Nottawasaga Bay and is affected by the one in one hundred year high lake level of 178 m CGDE, any opening of a building shall be a minimum elevation of 178.3 m CGDE.

[33] Ms. Rennie explained that the openings of the proposed building are 178.8 m and conforms to the above requirement.

[34] Section 4.12.2 also requires that the minimum setback from the 178.0 CGDE to a main building is 15.0 m, which is the provision from which the variance is requested to permit the location of the single detached dwelling. The Natural Hazard Study was approved by the NVCA and satisfies this provision in the by-law.

[35] The proposed variance request meets all other general provisions of the Residential Second Density (R2).

[36] The Tribunal is satisfied that the variance maintains the general intent and purpose of the Town's zoning by-law and that concerns relating to flood protection and erosion have been appropriately addressed to the satisfaction of the NVCA.

[37] Thirdly, the Tribunal is satisfied that the variance is desirable for the appropriate development and use of the land. The subject property as noted above is zoned "Residential Second Density (R2)" and permits single detached dwellings, which is the use proposed. The adjacent properties and neighbourhood in general consist of similar uses and that character will be maintained.

[38] Fourthly, the Tribunal is satisfied that the variance is minor.

[39] Ms. Rennie explained that the proposed reduction in the setback from the 178 m CGDE elevation is to allow the proposed residential dwelling to be moved to make room

for access to the site, for a driveway and to allow the preservation of the existing mature vegetation on the site, which currently provides a buffer for existing neighbouring homes.

[40] The proposed use is residential and is consistent with the surrounding land uses and the proposed location of the single detached dwelling is compatible with the existing built form and character of the neighbourhood.

[41] The Tribunal is satisfied that the proposed location of the dwelling with the reduced setback from the 178 m CGDE does not impact the views of Georgian Bay for any of the neighbours. It is noted that no other variances are being sought and that all of the performance standards under the zoning by-law can be met with the proposed location of the building envelope.

[42] The Shoreline Hazard Study notes that the proposed location is appropriate and safe due to other items on the subject property that help to mitigate the potential flooding hazard in this location, including a vegetative buffer that exists along an existing slope on the western portion of the building envelope. With some additional fill along the east portion, this will alleviate any spill over. The Study also notes that this design standard provides more than adequate protection for the subject structure.

[43] Moreover, the Fluvial Geomorphological and Meander Beltwidth Assessment confirms that the slope leading to the planned house footprint is stable and well vegetated and it is therefore highly unlikely that further erosion will occur along the watercourse that bisects the property. These studies support the application. The NVCA noted in their letter dated March 23, 2020 that the proposal was reviewed in accordance with its mandate and delegated responsibility from the Province to represent provincial interests regarding natural hazard identified in Section 3.1 of the PPS and concluded that it is satisfied with the technical documents submitted to them, have no objection to the minor variance application, and are in a position to issue a permit once the proposal is approved.

[44] The Tribunal is satisfied that the variance sought is minor and does not result in a greater adverse impact on adjacent properties, uses or area.

[45] Lastly, the Tribunal finds that the variance sought is consistent with the PPS, 2020.

[46] Ms. Rennie referred to policies 1.1.1 and 1.1.3 related to the building of strong communities and policy 3.1 related to the wise use and management of resources, natural hazards and concluded that the proposal is consistent with these policies, which promote efficient development and land use patterns which sustain the financial wellbeing of the Province and Municipalities over the long term.

[47] The subject property is located in an area recognized by both upper and lower tier Official Plans as a settlement area.

[48] There are no anticipated environmental, or public health and safety concerns.

[49] The technical studies completed and submitted in support of the application conclude that the proposal will not cause environmental or public health and safety concerns.

[50] The subject property is an existing lot of record within a designated growth area and will be serviced by full municipal services.

[51] The proposal includes site alterations and requirements to maintain existing vegetation on the property and the Shoreline Hazard Study notes that this design standard provides more than adequate protection for the subject structure. These recommendations have also been supported by the NVCA, which found that the proposed location for the dwelling is appropriate and does not pose a risk to public safety. The subject property owners have safe access and exit to and from the site. No new hazards are created from this proposal and there are no adverse environmental impacts anticipated by the development of the residential dwelling.

[52] With respect to the participant statement filed by David Finbow on behalf of Kelly and Claudio Ciaravella, the Tribunal finds that no weight should be accorded to this document. While he purports to proffer opinions with respect to land use planning, he does not set out any qualifications, which would permit him to proffer any opinions as an expert in any field.

[53] In summary, the Tribunal finds that the proposed variance meets the four tests under s. 45(1) of the *Planning Act*, and it is also consistent with the Provincial Policy Statement, 2020.

[54] Accordingly, the appeal is allowed, and the variance is hereby authorized.

[55] It is so ordered.

“R.G.M. Makuch”

R.G.M. MAKUCH
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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