

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



**ISSUE DATE:** March 23, 2021

**CASE NO(S):** PL200280

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:	James Bruce Sheridan
Applicant:	Paul Brown
Subject:	Minor Variance
Variance from By-law No.:	2005-6
Property Address/Description:	34 LB5
Municipality:	Township of Rideau Lakes
Municipal File No.:	A-4-2020
LPAT Case No.:	PL200280
LPAT File No.:	PL200280
LPAT Case Name:	Sheridan v. Rideau Lakes (Township)

**Heard:** March 4, 2021 by video hearing

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

James Bruce Sheridan

Self-represented

Paul Brown

Lisa Brown

Township of Rideau Lakes

Tony Fleming\*  
Spencer Putnam\*

**DECISION DELIVERED BY T.F. NG AND ORDER OF THE TRIBUNAL**

---

[1] Paul Brown, (“the Applicant”) is the owner of the property known municipally as

34 LB5, Ward of Bastard & South Burgess, (the “subject property”). He is proposing to demolish an existing two-storey 1125 square feet (“sq ft”) dwelling and construct a 1929 sq ft two-storey dwelling that has a complying 380 sq ft attached uncovered deck and construct a 330 sq ft one-storey structure (detached garage).

[2] He applied to the Township of Rideau Lakes (the “Township”) for the authorization of the following variances under Zoning By-law (“ZBL”) No. 2005-6 (imperial and metric units are used here, in keeping with the application):

- 1) Section 3.26.2 - Relief of 8.66 metres (“m”) from the minimum 30 m water setback to allow for a 21.34 m water setback for the proposed 1929 sq ft two-storey dwelling.
- 2) Section 3.1.7.3 - Relief of 2 m from the minimum 3 m interior side yard setback to allow for a 1 m interior side yard setback from the eastern lot line for the proposed 330 sq ft one-storey accessory structure.

[3] The Township Planning Staff recommended approval (reports dated May 22, 2020 and June 19, 2020) and the Committee of Adjustment (“the COA”) approved the minor variances on June 24, 2020 subject to 15 conditions.

[4] The authorization was appealed by James Bruce Sheridan (“the Appellant”), who owns the adjacent property.

[5] 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 remains on the Applicant notwithstanding that the COA approved the application. The four tests under s. 45(1) of the Act, require the Applicant 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 in nature.

[6] Janet Sheridan and Ted Sheridan were granted participant status without objection. Mr. Fleming, the Township's counsel called Jaclyn Schneider to give land use planning evidence and Michael Dakin to give evidence in environmental planning.

[7] The Appellant did not call any land use planning witness to support his contentions.

[8] The Tribunal qualified both of the Township's expert witnesses to give expert opinion in their respective specialisations, Mr. Dakin as an expert Environmental Planner and Ms. Schneider as an experienced Land Use Planner with the municipality.

### **TOWNSHIP'S POSITION**

[9] Ms. Schneider's testimony was in relation to the Planning Reports dated May 22, 2020 (site inspection on May 20, 2020) and June 19, 2020 ("planning reports") Exhibit-1, Tab 20. In the planning reports, the variances were: considered to be in keeping with the general intent of the Official Plan, as the property is designated Rural, which recognizes this property for a residential use (an environmental review has been completed and a Shoreline Buffer Planting Plan for proposed structures by the Applicant has been submitted to provide justification for the application); in keeping with the spirit and intent of Zoning By-law No. 2005-6 as amended, as the property is zoned Waterfront Residential ("RW") and Flood Plain ("FP") (no development is proposed in the FP zone); in the RW zone which provides for a single detached dwelling including accessory buildings and structures on each lot; desirable for the appropriate development of the lot and minor in nature. The reports recommended 15 conditions of approval.

[10] Policies that are applicable in the Township's Official Plan ("OP") are: s.3.7 which seeks to maintain the rural and recreational flavour of the Township and as such a modest amount of compatible and orderly development is permitted of which the

proposed use is considered consistent with this provision; s.2.2, on Waterfront Development Policies, speaks to policies relating to the development of waterfront properties. Section 2.2.3.2.1, provides that development or site alteration shall occur a minimum of 30 m from the normal high water mark of any waterbody as a means of protecting the natural and aesthetic qualities of the shoreline environment. Section 2.2.3.2.3 clarifies when a setback of less than 30 m can be approved providing “Development or site alteration may be permitted less than 30 metres from a waterbody in situations where existing lots or existing developments preclude the reasonable possibility of achieving the setback”. The existing septic system installed in 2006, the topography of the lot and the Hydro line are considered reasonable constraints limiting a further water setback for the proposed new dwelling. Nevertheless the 330 sq ft detached garage that the Applicant is developing complies with the water setback. Ms. Schneider opined that the recommended mitigation measures and the robust shoreline planting plan will limit impacts to the water. The identified Flood Plain on the subject property is designated a natural hazard, but there is no development planned there. The slope on the subject property where the proposed dwelling is to be built is not a steep slope. Since it is near water with potential fish habitat (no data on fish habitat available), the Applicant did the required environmental review which outlined mitigation measures, thus no negative impacts are anticipated from the proposed development.

[11] Section 2.6 (Environmentally Sensitive Development) of the OP outlines the importance of all waterfront developments to have regard to the cultural and natural heritage of the landscape and ecology of the Township. The Applicant has submitted a Shoreline Buffer Planting Plan to maintain existing vegetation and new plantings within the 30 m water setback, noting that the proposed new planting areas will be decided after excavation for the dwelling. Section 2.23 outlines the surface water quality and quantity policies where stormwater runoff are to be directed away from the lake and erosion control measures taken with silt and sediment fencing. Ms. Schneider was of the view that the variances and site plan meet the purpose and intent of the waterfront development policies and the OP as a whole.

[12] The RW zone regulates the intensity and form of development to protect

waterfront properties over the long term as ecological, recreational, economic and cultural resources. Residential use is permitted in this zone. The intent of the 30 m setback is to provide for a minimum separation distance between development and waterbodies. The proposed dwelling is proposed to be setback a minimum of 6.1 m further from the water than the existing dwelling. The water setback has been maximized when considering the topography and size of the lot and existing location of the septic system. The subject property consists primarily of rocks requiring excavation of the slope to obtain the setback of 70 ft. The Applicant is required to obtain the maximum setback reached with the excavation and to setback accordingly. All of the proposed development meets the required side yard and rear yard setbacks as well as the 6 m private right of way setback. The dwelling meets the maximum height requirement of 10 m at 26 ft (7.9 m). The proposed 380 sq ft attached, uncovered decking on the front of the cottage is permitted to encroach into the water setback from the dwelling at a maximum of 4 m as the proposed dwelling is setback greater than 15 m as per section 3.27 of the ZBL. The greatest depth of the proposed deck is to be 10.6 ft (3.2 m) which complies with the s. 3.27 provision. The entire property is within 60 m of a waterbody. The proposed development meets the lot intensity requirements related to lot coverage at a proposed 9.95% and the property also meets the requirements for Floor Space Index at 10.7%. She opined that overall, the requested variance for the increase in size of the existing non-complying dwelling within the 30 m water setback supports the intent and purpose of the ZBL.

[13] The Applicant is removing an existing non-complying dwelling and constructing a new and larger dwelling at a greater setback from the water. This proposal maximizes the development potential of the subject property. The proposal also included the development of an accessory structure (detached garage) which complies with the ZBL on the water setback at 43.6 m from the high water mark but require a variance from the eastern side lot line to allow for a 3.4 m setback from the Hydro One power line on the property. Hydro lines located near the detached garage were taken into consideration and a revised planting plan on the eastern lot line and Shoreline Buffer Planting Plan to be submitted. She was of the view that the proposal is appropriate for the property.

[14] The existing dwelling, a 1125 sq ft two-storey structure located 15.24 m (50 ft) from the high water mark is to be demolished to construct a 1929 sq ft two-storey dwelling with a 380 sq ft attached uncovered deck. The proposed dwelling is to be setback 21.34 m (70 ft) from the water which represents an increase of setback by 6.1m (20 ft). Although there is an increase in size, the overall height of the new dwelling is reduced by approximately 1.22 m due to a lower pitch roof and utilization of the slope of the subject property. While the increase in footprint and floor area may suggest a potential significant increase in size of an existing non-complying dwelling within the 30 m area, the water setback has been maximized on the lot when considering the existing physical conditions e.g. the topography, location of power lines and the location of the existing septic system. The additional water setback as well as the reduction in height mitigated these increases in size. All other setbacks are adhered to and the rear portion of the property is being utilized for the septic system, hydro lines being taken into consideration and a proposed 330 sq ft (previously 484 sq ft) accessory structure to be located at the most appropriate location. The proposal is well within all lot intensity provisions, as well as the reasonable constraints that precluded complying development, thus she opined that the proposed variances are minor in nature.

[15] Her testimony also addressed the consistency with the Provincial Policy Statement 2020 (“PPS”) in sections 2.1, 2.2, and 3.1 natural heritage, protection of water resources and natural hazard provisions. The property is not affected by a natural heritage feature. While affected by a natural hazard, a satisfactory review has been done. The Lower Beverley Lake waterbody water quality is not impacted as the buffer planting plan will mitigate runoff. With the shoreline buffer planting and vegetation increase, water resources are protected. Development is directed outside the flood plain area, and as such there is no development contemplated in the area. The Policies of the United Counties of Leeds and Grenville Official Plan (“County OP”) where the property designation is Rural, has also been considered. She opined that there is conformity with the provincial interests and the new development is in compliance with the ZBL and of the four tests.

[16] Mr. Dakin gave evidence with respect to the Cataraqui Region Conservation

Authority's ("CRCA") review and his report of that review dated March 18, 2020. The main interests of the CRCA are the protection of the water quality and ecological integrity of Lower Beverley Lake and its shoreline and the avoidance of natural hazards (flooding and erosion) associated with the Lake. On flooding, he said, based on Lidar elevation data, the flood plain (elevation of 92.9 m geodetic) does not extend beyond the immediate shoreline of the property. As such, the replacement dwelling and associated work will exceed the CRCA's flood plain setback and flood proofing requirements. The property has a two-tiered embankment with a lower and upper slope consisting of till covered bedrock. The existing cottage sits on a plateau between the two slopes. The new dwelling will sit partially on the upper slope. CRCA determined the erosion hazard as 21 m measured from the toe of the slope inland plus 6 m access setback. Based on this, the new dwelling will be outside the main part of the hazard but within the access allowance. The existing cottage is entirely within the erosion hazard, so moving the replacement new dwelling from the immediate hazard to the access allowance is a positive improvement. Moving the dwelling entirely outside the access allowance will preclude a suitable septic system location greater than 30 m from the Lake.

[17] The proposed dwelling will replace an existing cottage which is closer to the water. As noted, the new dwelling could not be located entirely outside the 30 m setback since it would preclude a compliant septic system at 30 m from the water. Where there is insufficient area for both a dwelling and septic system at 30 m from the waterbody, the CRCA will prefer the septic system to be located as far back as possible while allowing a setback reduction for the dwelling. This proposal is consistent with this approach. In his testimony, he stated he has visited the site on June 5 and July 20, 2020 and confirmed his views have not changed. With respect to the claimed sighting by the Appellant of a gray ratsnake many years ago, he stated that this has not been identified or positively flagged for the determination of the inhouse biologist at the CRCA and there is no evidence of there being a species at risk at that point.

[18] He stated that the CRCA is generally satisfied with the shoreline buffer plan submitted and have no objections to the minor variances based on the consideration of natural hazards, natural heritage and water quality protection policies.

## **APPELLANT'S CONCERNS**

[19] The Appellant's objections to the variances were that the application created environmental issues, did not comply with the applicable policies and are not minor. He claimed that the variances impacted on natural features and areas as well as having a negative impact on the shore of the waterbody. Further, the lot coverage is excessive and the required setback requirements are not met. According to the Appellant, the dwelling should be re-planned and not as proposed.

[20] The active excavation that the Applicant is putting the property to, building the accessory and new dwelling structures is causing the entire site to be subject to erosion. The manner the rocks are dumped at the edge and the shoreline leads to damage to the landscape and also a danger of the rocks and boulders rolling over to his adjacent property.

[21] The new development is not appropriate. This, the Appellant claimed, is a development and use that is inconsistent with the shoreline character. The original condition is undisturbed trees and vegetation while this development is doing damage to the wildlife habitat, especially to the gray ratsnake, an endangered species. The shoreline and waterbody at the water frontage is a natural feature that may be impacted by the variance.

[22] Mr. Sheridan referred the Tribunal to several photographs that he took of the subject property and alluded to the apparent over-development of this area of the property citing that the proposed placement of the accessory structure and the new dwelling on the property has a negative impact on the shoreline. There is a need to protect natural shoreline features that the proposed development is impacting. The encroachment on shoreline, habitat and water quality is considered to be impactful. As such he was of the view that the proposed development is not minor.

[23] His view was that the four tests are not met and the appeal should be allowed. The OP has clear directions on the importance of water setbacks which must be



followed. This variance application was designed to meet the Applicant's desire for a larger structure where alternative site plans are possible instead of the current. The variances appeared consistent with by-laws but information provided may be missing and does not indicate the zoning for the property. His opinion was that the variance application is in conflict with sections 2.2.2a and 2.2.2b of the OP and OP update.

[24] The participants echoed the Appellant's concerns and had filed their statements.

## **ANALYSIS AND DECISION**

[25] Each appeal is considered upon its own particular facts. After hearing from the Township's expert witnesses and taking into consideration the submissions, the photographs and the documentary material on record, the Tribunal finds that the variances under consideration satisfy the four tests under s. 45(1) of the Act for the reasons that follow.

[26] The Tribunal is persuaded by and agrees with the uncontroverted opinion evidence of Ms. Schneider and Mr. Dakin, which evidence withstood the cross-examination of the Appellant.

[27] The Tribunal is satisfied that the proposed variances to the subject property have regard for the matters of provincial interest as set out in s. 2(a) the protection of ecological systems, including natural areas, features and functions, and s. 2(h) the orderly development of safe and healthy communities. Under the PPS, when directing development on rural lands, a planning authority shall apply the relevant policies of s. 1: Building Strong Healthy Communities, as well as the policies in s. 2: Wise use and Management of Resources and s. 3: Protecting Public Health and Safety. Under s. 1.1.5.2 of the PPS, permitted uses on rural lands include resource based recreational uses and residential development that is locally appropriate is encouraged. The Tribunal finds that with the mitigation measures being put in place, there are no hazards or erosion risk which can result from the proposed new dwelling and the accessory use, to the subject property's shoreline which is reinforced by the Shoreline Buffer Planting Plan.

Further, as Mr. Dakin has said that the gray ratsnake had not been positively flagged, there is no evidence of a species at risk. The Tribunal is satisfied that the application is consistent with the PPS.

[28] The County OP designation is Rural Lands. Under the County OP policy of the natural heritage system, it provides for the reinforcement, conservation, restoration and enhancement of identified natural heritage features and areas and to promote the overall diversity and connectivity of natural heritage features and areas. This proposal having gone through the necessary reviews on the natural hazards and the mitigating measures that are taken and to be taken, the Tribunal is satisfied that the variance application maintains the general intent and purpose of the County OP.

[29] The primary objective of the Township OP s. 3.7 is to ensure that the scale of new development is consistent with the scale and character of this predominantly rural residential area and to minimize the impact of any new development near the shores of the Lower Beverley Lake in this particular case. The existing shoreline community areas are characterized by predominantly single detached dwellings with waterfront view or access to the shoreline. The policies of the plan are to protect and strengthen the rural and recreational flavour of these areas. A primary dwelling and an accessory building are permitted and compatible development. The Tribunal is satisfied that this maintains the general intent and purpose of the Township's OP.

[30] The purpose and intent of the ZBL is to regulate the use of lands, the intensity, form, location, use of buildings and structures within the Township Waterfront residential zone. This is to ensure that the waterfront properties are protected over the long term as ecological, recreational, economic and cultural resources. Residential use of property is permitted.

[31] Relief from the ZBL is being requested to permit a 1 m interior side yard setback from the eastern lot line for the proposed 330 sq ft one-storey accessory structure. This is to allow for a 3.4 m Hydro One power line setback. This detached garage meets all other setbacks of the ZBL and is within the height limit. The proposed lot coverage

intensity is 9.95% and 10.7% for Floor Space Index. Overall, the requested interior side lot line variance meets the intent of the ZBL. The other relief sought is to permit a 21.34 m water setback for the proposed 1929 sq ft two-storey dwelling building. Section 2.2.3.2.3 of the OP permits a setback that is less than 30 m where existing lots or existing developments preclude the reasonable possibility of achieving the setback, as in this situation.

[32] The Tribunal finds that the placement of the new dwelling and accessory structure in the locations as described in the drawings and plan have taken into consideration the subject property's lot shape, configuration, existing septic system location, topography, Hydro lines and gradient that is generally a double slope of the subject property. The proposed development is good land use planning. The Tribunal finds the Township's imposition of conditions is appropriate. The Tribunal is satisfied that the general intent and purpose of the ZBL is maintained.

[33] The proposed variances will facilitate the development of the dwelling and the accessory structure, which are uses that are contemplated for the subject property's neighbourhood and area. The variances meet the provincial, regional, and municipal planning objectives with respect to the creation of primary dwellings and accessory structures including garages. With the removal of the existing cottage and moving the new dwelling further away from the waterbody, coupled with the proposed Shoreline Buffer Planting Plan, these collectively represent improvements upon the subject property and enhancement of the property's shoreline. The Tribunal finds that the proposed variances are desirable for the appropriate use and development of the subject property.

[34] The variances will facilitate the dwelling and the accessory structure development within the existing topography, on the inherent pie-shape lot of the subject property taking into consideration the extant septic system location. The development will maintain compatibility with the existing built form character of the surrounding area. Mitigation measures for water runoff and vegetative buffer plantings are and will be in place. There is no evidence that there is undue adverse impact on the owners of

adjacent properties or on the neighbourhood. The Tribunal is satisfied that the variances are minor in nature.

[35] In summary, the Tribunal finds the requested variances to have regard for the provincial interests of s.2 of the Act, to be consistent with the PPS, and to meet all four tests of s.45 of the Act.

## **ORDER**

[36] The Tribunal Orders that the Appeal is dismissed and the variances to Zoning By-law No. 2005-6 are authorized subject to the conditions set out in Attachment 1 to this Order.

“T.F. Ng”

T.F. NG  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.olt.gov.on.ca](http://www.olt.gov.on.ca) to view the attachment in PDF format.

### **Local Planning Appeal Tribunal**

A constituent tribunal of Ontario Land Tribunals

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## REPORT TO THE COMMITTEE OF ADJUSTMENT & PLANNING ADVISORY COMMITTEE

**Date of Report:** June 19, 2020


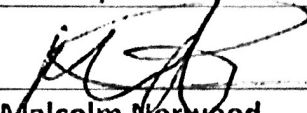
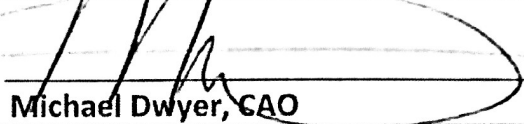
**Date of Meeting:** June 24, 2020

**Subject of Report:** Minor Variance A-4-2020 & Site Plan Control Application SP-8-2020

### **Recommendation:**

Staff recommend that the Minor Variance application A-4-2020 and Site Plan Application SP-8-2020 be approved, subject to the subsequent conditions:

1. That this approval is based on the following specifications and that any deviation from these specifications will require subsequent review and approval by the Township:
  - a. The dimensions and location of the proposed structure(s) shall be consistent with the information noted in the minor variance application and the approved site plan drawing;
  - b. All setbacks and development parameters shall be consistent with the details noted in the approved site plan and compliant with Zoning By-law 2005-6 where no variance has been granted;
2. That the applicant acknowledges that the lot coverage on the entire lot is at 9.95% (maximum permitted is 10%) and that any further development on the property will most likely require a planning approval;
3. That the applicants acknowledge that a condition of approval is that the 330sqft accessory structure (detached garage) cannot be used for habitation and that the only plumbing that is permitted is a small wash sink. Similar wording shall be placed on the required building permit;
4. That the applicants enhance the vegetation along the eastern interior side lot line to ensure an adequate buffer to mitigate the impacts of the reduced interior side yard;
5. That the applicants obtain the maximum water setback that results from the excavation of the slope on the subject property. A revised Site Plan shall be required if an additional setback is achievable;
6. That the applicants agree to register the Site Plan Agreement for this application on title of the subject property prior to the issuance of a building permit for the 1929sqft 2-storey dwelling with a 380sqft attached, uncovered deck and 330sqft accessory structure (detached garage). All expenses pertaining to the registration are to be borne by the applicants;
7. That the applicant adheres to the submitted Shoreline Buffer Planting Plan. The applicant shall also encourage the development of a shoreline naturalization buffer (no disturbance area) extending 15m back from the high water mark. A shoreline access path through this area is permitted;
8. That construction should cease and the Ministry of Environment, Conservation, and Parks be contacted immediately if any species at risk are observed during construction;
9. That storm water runoff be captured and directed away from the lake to an area of infiltration;
10. That all outdoor lighting be downward cast, and as minimal as required to meet the required objectives;
11. That all materials used on the exterior of the structure be of a natural material or a colour reflective of the surrounding environment;
12. That the applicant maintain all on site drainage patterns;
13. That sediment and erosion control measures be implemented during all stages of construction. This must include some form of silt fencing between the areas of development and the lake. This fencing must remain in place until all areas that were disrupted are fully stabilized (i.e. no bare soils remain);

<p>14. All excavated material is to be disposed of away from the lake, and all construction material shall be stored in a location well away from the lake; and</p> <p>15. Future development not included in this application will be subject to review and approval by the Township, Conservation Authority and/or Parks Canada and any other governing agency or regulations where applicable.</p>	
Report Prepared By:	 Jaclyn Schneider, Associate Planner Development Services Department
Departmental Approval:	 Malcolm Norwood A/Manager of Development Services
Chief Administrative Officer (CAO) Approval:	 Michael Dwyer, CAO

**1.0 PROPERTY AND OWNER INFORMATION:**

Attribute	Value
Roll Number	083183105628700
Owner Name	BROWN, PAUL (Agent: Lisa Brown)
Location	34 LB5
Area	0.41 acres
Frontage	186ft Lower Beverley Lake
Depth	189ft
Description	PLAN 153 BLK H PT LOT 1 PT;RD ALLOW RP 28R5518 PARTS 2;3 7 8 14 AND 17

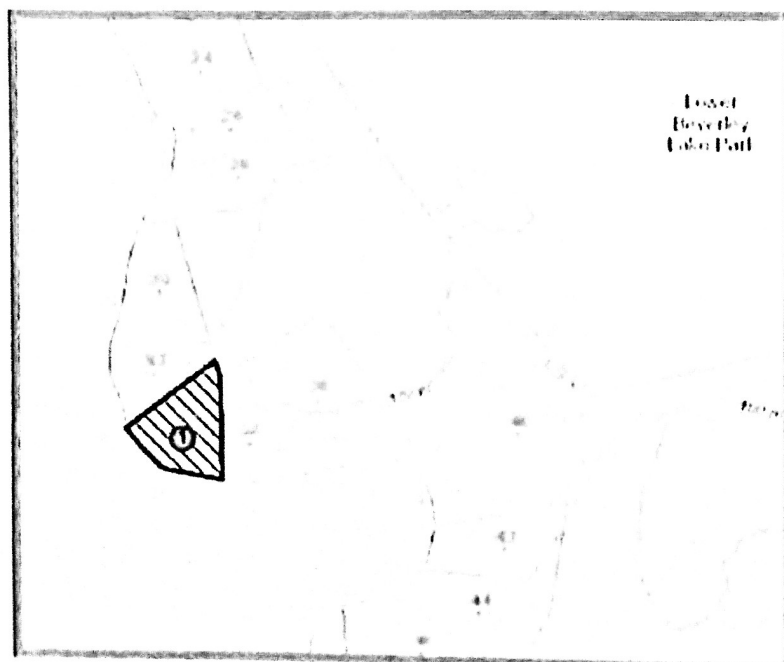


Figure 1 – Context Map