

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 27, 2021

CASE NO(S): PL210143

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Mark Agius
Applicant:	Norman Oliver
Subject:	Minor Variance
Variance from By-law No.:	06-10
Property Address/Description:	1020 Moore Lake Estates Road
Municipality:	Township of Minden Hills
Municipal File No.:	PLMV219070
OLT Case No.:	PL210143
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OLT Case Name:	Agius v. Minden Hills (Township)

Heard: June 30, 2021 by Video Hearing

APPEARANCES:

Parties

Counsel*/Representative

Norman Oliver

Mike Grozelle

Mark Agius

Self-represented

Township of Minden Hills

John Ewart*

**MEMORANDUM OF ORAL DECISION DELIVERED BY M.A. SILLS ON JUNE 30, 2021
AND ORDER OF THE TRIBUNAL**

[1] The matter before the Tribunal was the appeal by Mark Agius (the “Appellant”) of the approval by the Township of Minden Hills (the “Township”) Committee of Adjustment

(the “COA”) of a minor variance application for the property owned by Norman Oliver (the “Applicant”) and located at 1020 Moore Lake Estates Road (the “property”).

[2] The Appellant is the owner of the adjacent property to the south (1018 Moore Lake Estates Road).

[3] The property is designated Waterfront by the Township Official Plan (“TOP”) and zoned Shoreline Residential (SR) Zone by Zoning By-law No. 06-10 (“ZBL”).

Context to the Application

[4] The property is approximately 0.27 acres (“ac”) in area with a depth of 56.6 metres (“m”) and a frontage along the west shore of the Gull River (19.4 m) and Moore Lake Estates Road (18.9 m). The property was created circa 1960, and in common with other waterfront properties in this area is slightly deficit in lot area and frontage.

[5] The property was acquired by the Applicant in 2003 and currently maintains a 69.1 square metre (“sq m”) single storey dwelling with two decks (east side and front), and a vinyl sided garage sited near the road.

[6] The overall pattern of development in this area is linear, with the waterfront properties generally maintaining dwellings sited within the High Water Mark (“HWM”) of the river, and garages located near the road and/or along side lot lines. The area topography is generally flat with a gradual downward slope to the shoreline, then dropping more substantially near the waters edge.

[7] The original application was filed on November 18, 2019 and sought eight variances to permit the construction of:

- a 26.8 sq m carport located 1.67 m from the north side lot line;

- an 11.1 sq m addition to an existing deck located 7.6 m from the HWM of Gull River;
- a 22.3 sq m carport located 1.2 m from the south side lot line; and,
- a 29.7 sq m addition to the existing dwelling located 12 m from the HWM.

[8] That application was before the COA on January 27, 2020, at which time it was deferred because it was lacking necessary detail of the proposed development plan. The deferral provided an opportunity for the Applicant to revise the proposal and/or provide additional information and detail about the development scheme.

[9] A modified proposal and a revised application was prepared and put before the COA on October 26, 2020, at which time an amended list of variances was conditionally approved. The effect of the revisions to the proposal was to delete the addition to the deck and the carport at the north side lot line, and to increase the south side yard setback for the newly proposed carport to 3 m, and thereby, reduced the number of variances required to five.

[10] For greater clarity, the variances to the ZBL approved by the COA, and now before the Tribunal, are as follows:

1. To permit a lot coverage of 16%, whereas the maximum permitted lot coverage is 15% (s. 5.2).
2. To permit a lot coverage of all detached accessory buildings of 8%, whereas 5% is the maximum coverage permitted (s. 4.1.8).
3. To permit a 22.3 sq m carport to project a distance of 3 m from the south lot line, whereas a projection of 4.5 m is the minimum required (s. 5.2).
4. To permit a 22.3 sq m carport to project a distance of 22.9 m from the HWM, whereas 23 m is the minimum required (s. 5.2).

5. To permit a 37.1% increase to the existing 744 square foot ("sq. ft.") (69.1 sq m) dwelling to allow for a 1,020.42 sq. ft. (94.8 sq m) dwelling, whereas no increase is otherwise permitted.

[11] Mike Grozelle, the Applicant's contractor, provided details of the revised development proposal and responded to questions from the Tribunal.

[12] The Appellant did not call any witnesses, but did submit his version of a 'Book of Documents', which contained an Offer to Settle; a lists of his concerns; his analysis and opinions regarding the tests set out in s. 45(1) of the *Planning Act*, and copies of Complaint Forms he has filed to the Town's By-law Enforcement – Property Standards Department and the subsequent Response by the Municipal Law Enforcement Officer.

[13] Included among his reasons provided in the Appeal Record is that the Applicant has not demonstrated any extraordinary need for the minor variances, and that the drawings provided by the Applicant fail to provide an adequate detailed layout of the existing dwelling and that the septic limits and measurements are improperly scaled and inaccurately define the placement of the carport.

[14] In the course of the hearing, the Appellant indicated that if the variances are approved, he wanted the Tribunal to stipulate that the carport is to remain open-sided, and that a *proviso* be included that if the property is sold the variances are 'reversed'.

Planning Evidence

[15] The Township's Planning Consultant, Darryl Tighe, is a registered professional planner and a Member of the Ontario Professional Planners Institute with more than 38 years of practical experience.

[16] Mr. Tighe proffered contextual and land use planning evidence and opinion to support the revised proposal and amended application approved by the COA. Overall, it is Mr. Tighe's professional opinion that the revised development proposal is appropriate

and represents good planning, and the approved variances meet the statutory tests under s. 45(1) of the *Planning Act*.

[17] In addressing the Provincial Policy Statement, 2020 (“PPS”), Mr. Tighe indicated that although the policy framework offers limited direction in this case, it is his opinion that the proposal maintains the policy directives of the PPS.

[18] It is also his opinion that the general intent and purpose of the TOP is being maintained. Residential uses are permitted within the Shoreline designation, but with an emphasis on low density development to avoid overdevelopment from occurring along the shoreline. Section 5.2 of the TOP establishes standards for regulating development of shoreline residential areas in order to maintain the low density land use pattern.

[19] The TOP recognizes and encourages the preservation of the character and natural heritage of waterfront areas. In this case, it is anticipated that there will be minimal to no perceptible impact to the waterfront character or the surrounding natural environment. The location of the proposed carport and cottage addition is well removed from the shoreline, and there will be no significant (if any) loss of natural vegetation, alteration of the shoreline or overdevelopment of the property.

[20] The TOP also establishes policies for shoreline setbacks (s. 3.2.3.6). This policy section encourages the minimum setback requirement for primary and accessory structures (30 m) but is not prescriptive. Rather, it provides an exemption to the 30 m setback, whereby a lesser minimum setback of 23 m is permitted for buildings and structures that existed on the date the TOP was approved (February 25, 2014). The lesser setback can be permitted in a situation where it is not physically possible, due to terrain or lot depth features, to meet the required setback. Mr. Tighe pointed out that, in this case, the current dimensions of the property constrain the development locations of accessory buildings.

[21] Based on his review and assessment of the policies of the TOP, it is Mr. Tighe’s opinion that the proposed accessory structures and building expansion maintain the

general intent and purpose of the TOP. In that same vein, given that the TOP is deemed to conform with the County of Haliburton Official Plan ("COP"), it is his opinion that the general intent and purpose of the COP is being appropriately maintained.

[22] The property is within the Shoreline Residential Zone which permits a single detached vacation dwelling. The residential use of the property has been established since the 1960's. The proposed expansion of the living area is modest but will provide additional living space and the proposed carport will serve to enhance the overall utility of the property and improve access to/from the residence for the convenience of the property owner. It is his opinion that the intent and purpose of the ZBL is being maintained.

[23] In response to the aesthetic concerns raised in the Appellant's 'opposition letter', Mr. Tighe confirmed that the setback of the cottage addition from the south property line exceeds the 4.5 m requirement. As well, the carport will be setback 3 m from the shared property line, whereas the setback requirement is 2 m, and is 27 feet from the facing wall of the Appellants' cottage. Furthermore, the carport and the cottage addition are generously buffered from the Appellant's property by mature trees and vegetation along the separating property line. In his opinion, the variances support development that is desirable and appropriate for the property.

[24] Lastly, it is Mr. Tighe's opinion that the variances are minor and do not result in the creation of unacceptable impacts. The proposed addition comprises a 'squaring off' of the existing dwelling and no perceptible impacts are anticipated. The proposed variances do not pose a further reduction to the existing shoreline setbacks or the south interior side yard setback and the carport does not exceed the maximum height allowed by the ZBL.

Analysis and Disposition

[25] The Tribunal, having considered both the concerns of the Appellant and the land use planning evidence of Mr. Tighe, finds that the variances individually and collectively meet the tests established by s. 45(1) of the *Planning Act*.

[26] The Tribunal is also satisfied that the development of the property, in the manner proposed, does not attract any matters of Provincial interest.

[27] The Tribunal finds that the general intent and purpose of the TOP, the COP and the ZBL are being appropriately maintained and the variances being sought are minor in nature. The variances will facilitate a modest and desirable improvement of an established residential property that is compatible with the form of development in this area. There is no evidence the variances will result in the creation of unacceptable impacts to the river, the surrounding natural environment, or other properties in this area, including the Appellant's property.

[28] The Tribunal finds that the variances, subject to the fulfillment of the conditions of approval, appropriately provide for the development of the property in a manner that aligns with the principles of good land use planning.

[29] The adverse impact concerns, identified by the Appellant, have not been demonstrated in any meaningful way, and in my view, are unsupportable from a land use planning policy perspective.

[30] The Tribunal does not accede to the requests by the Appellant to stipulate that the carport is to remain open-sided, or that the variances be voided if the property is sold. In the first instance, Mr. Grozelle confirmed that the carport to be installed replicates the illustration provided in the application materials – an open-sided structure with a roof covering. Otherwise, a full garage is a permitted use. On the second matter, the zoning permissions granted belong to the property, regardless of who owns the property.

[31] In the course of his planning analysis, Mr. Tighe took the Tribunal to s. 4.1.11 of the ZBL, which provides as follows:

Garages: A single storey detached private garage may be erected and used in any required interior side or rear yard provided that it is no closer than the required yard or 2.0 metres to the interior side or rear lot line, whichever is

less, except that common semi-detached garages may be centred on the mutual side lot line.

[32] Based on this zoning provision, it is Mr. Tighe's opinion that Variance 3 is not required. Although the Tribunal can agree that Variance 3 is not required, to avoid any uncertainty about what is approved, the Tribunal's Order will also include Variance 3.

ORDER

[33] The Tribunal orders that the appeal is dismissed and the variances to Zoning By-law No. 06-10 are authorized subject to the following conditions:

1. The approval of the minor variances granted shall only relate to the construction of two carports and additions to the deck and dwelling, which shall proceed substantially in accordance with the relevant drawings/plans submitted January 8, 2020, as amended by the revised proposal and put before the Committee on October 26, 2020 and forming a part of this Decision; and
2. That the Applicant apply to the Township of Minden Hills for the purchase of the Shoreline Road Allowance.

"M.A. Sills"

M.A. SILLS
VICE-CHAIR

Ontario Land Tribunal

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