

**The Corporation of the City of Kawartha Lakes**  
**Committee of Adjustment Report – Shepherd and Deel**  
Report Number COA2019-009

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**Public Meeting**

**Meeting Date:** February 21, 2019  
**Time:** 1:00 pm  
**Location:** Council Chambers, City Hall, 26 Francis Street, Lindsay

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**Ward: 6 –Geographic Township of Emily**

**Subject:** The purpose and effect is to permit the construction of an addition to a single detached dwelling with a deck, recognize the construction of two cabins, and recognize the construction of a pool and deck by requesting relief from the following provisions:

**Addition to Single Detached Dwelling inclusive of a Deck**

1. Section 12.2.1.3(b)(ii) to reduce the minimum interior side yard setback to the east lot line from 5.5 metres to 2 metres; and
2. Section 12.2.1.3(e) to reduce the minimum water setback from 30 metres to 26 metres for the dwelling and 24 metres for the deck.

**Recognition of Existing Deck, Stairs and Pool**

3. Section 12.2.1.3(b)(ii) to reduce the minimum interior side yard setback to the west lot line from 3 metres to 1.5 metres,
4. Section 12.2.1.3(e) to reduce the minimum water setback from 30 metres to 14.2 metres, and
5. Section 3.18.1.1(a) to reduce the minimum setback from an Environmental Protection (EP) Zone from 15 metres to 14.2 metres.

**Recognition Pertaining to Both Existing Cabins**

6. Section 3.1.6.1 to increase the number of permitted cabins from 1 to 2 and increase the total permitted floor area for cabin use from 30 square metres to 41.4 square metres.

**Recognition of Existing Cabin 1**

7. Section 3.18.1.1(a) to reduce the minimum setback from an Environmental Protection (EP) Zone from 15 metres to 4.4 metres,
8. Section 12.2.1.3(e) to reduce the minimum water setback from 30 metres to 4.4 metres,
9. Section 12.2.1.3(b)(i) to reduce the minimum interior side yard setback from 3 metres to 1 metre; and
10. Section 12.2.1.3(d) to reduce the minimum rear yard setback from 7.5 metres to 1.3 metres.

### **Recognition of Existing Cabin 2**

11. Section 12.2.1.3(b) to reduce the minimum side yard setback from 3 metres to 0.5 metres,
12. Section 3.18.1.1(a) to reduce the minimum setback from an Environmental Protection (EP) Zone from 15 metres to 14.9 metres; and
13. Section 12.2.1.3(e) to reduce the minimum water setback from 30 metres to 14.9 metres.

The variance is requested at 132 Charlore Park Drive, geographic Township of Emily (File D20-2019-002).

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**Author: David Harding, Planner II**

**Signature:**

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### **Recommendations:**

**RESOLVED THAT** Report COA2019-009 Shepheard and Deel, be received;

**THAT** the following variances pertaining to one and/or both cabins in application D20-2019-002 be **DENIED** as the application does not meet the general intent and purpose of the official plan and zoning by-law as set out in Section 45(1) of the Planning Act:

#### **Recognition Pertaining to Both Existing Cabins**

6. Section 3.1.6.1 to increase the number of permitted cabins from 1 to 2 and increase the total permitted floor area for cabin use from 30 square metres to 41.4 square metres.

#### **Recognition of Existing Cabin 1**

7. Section 3.18.1.1(a) to reduce the minimum setback from an Environmental Protection (EP) Zone from 15 metres to 4.4 metres,
8. Section 12.2.1.3(e) to reduce the minimum water setback from 30 metres to 4.4 metres,
9. Section 12.2.1.3(b)(i) to reduce the minimum interior side yard setback from 3 metres to 1 metre; and
10. Section 12.2.1.3(d) to reduce the minimum rear yard setback from 7.5 metres to 1.3 metres.

#### **Recognition of Existing Cabin 2**

11. Section 12.2.1.3(b) to reduce the minimum side yard setback from 3 metres to 0.5 metres,
12. Section 3.18.1.1(a) to reduce the minimum setback from an Environmental Protection (EP) Zone from 15 metres to 14.9 metres; and
13. Section 12.2.1.3(e) to reduce the minimum water setback from 30 metres to 14.9 metres.

**THAT** the following variances pertaining to the addition to the single detached dwelling and its deck, the recognition of the existing deck and pool, and variance for Cabin 2 as amended by staff in application D20-2019-002 be GRANTED, as the application meets the tests set out in Section 45(1) of the Planning Act:

**Addition to Single Detached Dwelling inclusive of a Deck**

1. Section 12.2.1.3(b)(ii) to reduce the minimum interior side yard setback to the east lot line from 5.5 metres to 2 metres; and
2. Section 12.2.1.3(e) to reduce the minimum water setback from 30 metres to 26 metres for the dwelling and 24 metres for the deck.

**Recognition of Existing Deck, Stairs and Pool**

3. Section 12.2.1.3(b)(ii) to reduce the minimum interior side yard setback to the west lot line from 3 metres to 1.5 metres,
4. Section 12.2.1.3(e) to reduce the minimum water setback from 30 metres to 14.2 metres, and
5. Section 3.18.1.1(a) to reduce the minimum setback from an Environmental Protection (EP) Zone from 15 metres to 14.2 metres.

**Recognition of Existing Cabin 2**

6. Section 12.2.1.3(e) to reduce the minimum water setback from 30 metres to 15 metres; and
7. Section 12.2.1.3(b) to reduce the minimum side yard setback from 3 metres to 1.2 metres.

**Conditions:**

- 1) **THAT** the building construction related to this approval of the addition with its deck, existing deck and pool shall proceed substantially in accordance with the sketch in Appendix C submitted as part of Report COA2019-009, which shall be attached to and form part of the Committee's Decision; and
- 2) **THAT** the owners acquire the necessary permissions from the Kawartha Region Conservation Authority pursuant to Ontario Regulation 182/06, as amended for the buildings and structures granted by this variance approval being the: addition to the single detached dwelling, deck addition, deck and pool and any accessory storage buildings.
- 3) **THAT** the applicant obtain any requisite Remediation Agreements from Kawartha Conservation Compliance staff in relation to Cabin 2 should the applicant wish to maintain and relocate the building,
- 4) **THAT** as part of the permissions process pursuant to Ontario Regulation 182/06, the owners work with Kawartha Conservation Compliance and Stewardship staff to develop and implement a shoreline plantings plan of native, non-invasive species to enhance the fish habitat buffer as compensation for the encroachment into the 30 metre fish habitat buffer.

- 5) **THAT** prior to the issuance of a building permit for the addition to the single detached dwelling, the owners shall submit to the Secretary-Treasurer written confirmation from the Chief Building Official or his/her designate that the building identified on the application as Cabin 1 has been removed from the property and that the building identified on the application as Cabin 2 has been relocated in conformity with the zoning by-law and any outstanding building permit issues with said building rectified; and
- 6) **THAT** the building construction related to the minor variances shall be completed within a period of twenty-four (24) months after the date of the Notice of Decision, failing which this application shall be deemed to be refused. This condition will be considered fulfilled upon completion of the first Building Inspection.

**This approval pertains to the application as described in report COA2019-009. Fulfillment of all conditions is required for the Minor Variances to be considered final and binding.**

**Background:** The owners applied for pre-screening in March 2018. Through pre-screening, it was identified that surveyor confirmation was identified that:

1. Surveyor confirmation was needed to identify all distances to existing and proposed buildings,
2. Building permits were issued for two sheds in 2005, not cabins, and the cabins were not sited in compliance with the applicable setbacks; and
3. Staff would likely be unable to support the continued existence of all buildings/structures.

This application was last amended February 4, 2019.

**Proposal:** To recognize two cabins, a deck and pool and permit the construction of an addition with a deck to a single detached dwelling.

**Owners:** Mary (Meri) Shephard and Timothy Deel

**Legal Description:** Lot 2, Plan 331, geographic Township of Emily, now City of Kawartha Lakes

**Official Plan:** Waterfront within the City of Kawartha Lakes Official Plan

**Zone:** Rural Residential Type Three (RR3) Zone within the Township of Emily Zoning By-law 1996-30

**Site Size:** 2,027.1 square metres (0.5 acre)

Site Servicing: Private individual well and septic system

Existing Uses: Shoreline Residential

Adjacent Uses: North: Second Tier Shoreline Residential, Cottage Resort  
South: Pigeon River  
East: Shoreline Residential, Cottage Resort  
West: Shoreline Residential

**Rationale:** A variance for increasing the total number of accessory buildings on the lot from 3 to 4 was not sought as the boat house is not situated on the lot, but on filled land owned by Parks Canada.

Cabins, while defined as accessory buildings, are subject to the same setbacks as a dwelling as they are used for human habitation.

**1) Are the variances minor in nature?**

**A. For the Cabins? No**

The subject property is located within the Charlore Park neighbourhood, which is a peninsula dividing Pigeon Lake from Pigeon River.

The primary function of a rear yard that abuts a shoreline is to provide landscaped open amenity space for recreational purposes as well as to provide for the treatment of storm water runoff and an environmental buffer to the river.

The deck and pool occupy a central area within the rear yard, with Cabin 2 and the boathouse providing additional built form within the eastern portion of the yard. The presence of Cabin 1 further adds to the volume of built form within the rear yard, and brings human habitation and built form very close to the shoreline than what is permissible or appropriate for the waterfront character of the neighbourhood. Cabin 1 has also been identified by the Kawartha Region Conservation Authority (KRCA) as being partially within the flood hazard.

Due to the above analysis, components of the proposal cannot be considered minor.

**B. For all other Buildings and Structures? Yes**

The addition to the dwelling will be a similar distance from the shoreline than the existing deck that runs along the rear wall of the dwelling, and the deck off the proposed addition will be behind the pool and deck. As such, the total increase in built form to the dwelling when viewed from the shoreline will appear minor.

The existing rectangular deck surrounding the pool within the rear yard are lesser in height than the dwelling, and will continue to appear accessory in relation to the dwelling. While a corner of the deck is 0.8 metres closer to the shoreline than the 15 metres outlined within the Official Plan, the reduction is not anticipated to be perceptible given the degree of landscaped open space remaining between the deck and shoreline.

The stairs to the west side of the deck are heavily screened from the abutting neighbour by a cedar hedge that is approximately 3.4 metres tall. The hedge is

on the subject property and is approximately as tall as the deck railing. The increased proximity of the stairs to the abutting west lot is not anticipated to generate major land use conflicts as the deck space abutting the stairs is of insufficient size to serve as an amenity space. The deck on the east side of the dwelling is narrow and serves to facilitate access from a side door to the wider portion of the deck within the rear yard and/or provide access to the rear yard.

The proposed spatial separation between the dwelling and the east side lot line is not anticipated to cause any adverse massing impacts on the abutting neighbour to the east due to the vegetation present along the mutual lot line.

Within the portion of the rear yard where Cabin 2 is present, this cabin should be relocated so that it maintains at least 15 metres of spatial separation from the shoreline and 1.2 metres from the side lot line to provide adequate space for access and maintenance to the eastern wall in accordance with Engineering Divisions' comments. The 1.2 metres is consistent with the setbacks established for most accessory buildings within many of the City's other zoning by-laws, and is appropriate as there are no window openings along the east side of the cabin which may cause a conflict with the abutting neighbour. As development is clustered on the east side of the lot, the overall impact of built form on this side is lessened.

## **2) Is the proposal desirable and appropriate for the use of the land?**

### **A. For the Cabins? No**

The presence of two cabins within the rear yard provides additional accommodation to overnight visitors. However, it is not appropriate as this increased activity is supposed to be limited in scale, located close to the dwelling rather than the shoreline, and causes much built form to be present within the rear yard, a space which is intended to remain open to provide a vegetative buffer between human activity and the shoreline. The Kwartha Region Conservation Authority has also noted that Cabin 1 is partially within the regulatory flood plain and its buffer, and is not in a position to support the cabin as its location poses a risk to public health or safety or damage to property.

For these reasons, the presence of a second cabin cannot be considered desirable and appropriate.

### **B. For all other Buildings and Structures? Yes**

The addition will allow the re-configuration of space within the dwelling and provide additional rooms to increase the functionality of the dwelling.

The addition is proposed within a portion of the lot which functions as a pathway between the front and rear yards. For this reason, it does not function as a significant amenity area. Sufficient space will remain between the addition and side lot line for pedestrian access between these two yards to continue.

The pool and its deck provide additional recreational space within the rear yard, with only the southwest corner of the deck coming within 15 metres of the shoreline.

The relocated Cabin 2 may remain within the rear yard to provide some additional accommodation to visitors provided that it is moved closer to the dwelling rather than the shoreline.

As the balance of the proposal maintains adequate separation from the shoreline to provide a sufficient buffer to the water, it is considered desirable and appropriate.

**3. Do the variances maintain the intent and purpose of the Zoning By-law?**

**Yes**

**A. For the Cabins? No**

The subject property is zoned Rural Residential Type Three (RR3) Zone within the Township of Emily Zoning By-law 1996-30.

The zoning by-law through its Environmental Protection Zone setback, has established minimum setbacks from the shoreline to provide a sufficient buffer of landscaped open space between the water and built form to improve water quality and habitat. Permitting additional buildings between the dwelling with its pool and deck and the shoreline runs contrary to the intent of the zoning by-law to provide this increased spatial separation between development on the lot and Pigeon River.

The zoning by-law has also established the maximum footprint (30 square metres) and number of cabins (1) that a lot of sufficient size may have. It is clear through the placement and function of the rear yard that there is insufficient space to site two cabins on the lot. Cabin 2 meets the footprint requirement and could be relocated in such a way that it does not interfere with the function of the property or rear yard.

**B. For all other Buildings and Structures? Yes**

The addition to the dwelling, the decks and pool do provide sufficient buffer of landscaped open space between the water and the built form, provided certain measures are implemented, which shall be examined within the Official Plan test.

The reduced setback of the addition to the side lot line provides for sufficient space to maintain pedestrian access between the front and rear yards. The enhanced setback of relocated Cabin 2 provides sufficient space for maintenance and lot drainage.

Therefore, the balance of the variances maintain the general intent and purpose of the Zoning By-Law.

**4. Do the variances maintain the intent and purpose of the Official Plan?**

**A. For the Cabins? No**

The subject property is designated Waterfront in the City of Kawartha Lakes Official Plan (Official Plan). Residential uses are anticipated within this designation. The intent of the Official Plan, particularly policy 3.11 is that development should be located 30 metres from the shoreline where possible in accordance with Ministry of Natural Resources and Forestry recommendations.

When it is not possible, development shall be located no less than 15 metres from the shoreline to provide a sufficient buffer of landscaped open space between the water and built form to improve water quality and habitat. Cabin 1 represents a significant encroachment into the shoreline buffer area, and can therefore not be supported.

**B. For all other Buildings and Structures? Yes**

While it may be possible to remove a small portion of the deck to maintain 15 metres at all points from the shoreline, this would likely expose the above-ground pool within and would not be a reasonable expectation. As the vast majority of the deck and pool structure is outside of 15 metre minimum, the intent of the Official Plan setback policies are maintained.

The addition and Cabin 2 may be constructed outside of the 15 metre water setback, and in the case of the dwelling much room (24 metres) remains to the shoreline.

The KRCA has advised that in accordance with the Ministry of Natural Resources and Forestry's recommendations, a shoreline planting plan is required for the encroachment into the 30 metre fish habitat buffer since lawn alone cannot perform the necessary environmental functions within the reduced buffer area.

In consideration of the above, the rest of the variances maintain the general intent and purpose of the Official Plan provided a shoreline planting plan is implemented.

**Other Alternatives Considered:**

Removal or relocation of some buildings/structures was discussed in pre-screening due to the reduced water setbacks being proposed. The owners structured the application to ask to recognize as much of the existing development as possible.

**Servicing Comments:**

The property is serviced by a private individual septic system.

**Consultations:**

Notice of this application was circulated in accordance with the requirements of the Planning Act. Comments have been received from:

**Agency Comments:**

Kawartha Region Conservation Authority (February 11, 2019): A permit for all works seeking relief within the variance application require permits from their office. Conditions are requested to address their concerns. Cabin 1 is not permitted in its proposed location, and must be relocated outside of the flood hazard and associated buffer or removed. Cabin 2 is to be relocated at least 15 metres away from the shoreline. The remainder of the variances seeking relief to encroach into the 30 metre water setback are supported provided a planting plan is developed as part of their office's permitting process.



Engineering and Corporate Assets Department (February 11, 2019): The building identified on the sketch as Cabin 2 does not maintain the minimum setback required to provide for any drainage issue that may arise between private properties.

Building Division (January 7, 2019): No concerns. A 2005 building permit was issued for two sheds, not cabins, and the buildings were not sited in accordance with the zoning by-law.

**Public Comments:**

No comments as of February 12, 2019.

**Attachments:**



Appendices A-D to  
COA2019-009.pdf

Appendix A – Location Map

Appendix B – Aerial Photo

Appendix C – Applicant's Sketch

Appendix D – Department and Agency Comments

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<b>Department Head:</b>	Chris Marshall, Director of Development Services
<b>Department File:</b>	D20-2019-002