

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



ISSUE DATE: January 27, 2020

CASE NO(S):

PL190381

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:	Ahmad Jawad Hadi
Subject:	Minor Variance
Variance from By-law No.:	94-07
Property Address/Description:	45 Marsh Creek Road
Municipality:	City of Kawartha Lakes
Municipal File No.:	D20-2019-030
LPAT Case No.:	PL190381
LPAT File No.:	PL190381
LPAT Case Name:	Hadi v. Kawartha Lakes (City)

Heard: January 8, 2020 in Lindsay, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Ahmad Jawad Hadi

Self-represented

City of Kawartha Lakes

Denitza Koev*

DECISION DELIVERED BY D. CHIPMAN AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Ahmad Jawad Hadi (the “Appellant”) appealed the decision of the Committee of

Adjustment (the “CoA”) of the City of Kawartha Lakes (the “City”) which refused his application for three minor variances at 45 Marsh Creek Road, Concession B and C, Part Lot 23 and Part Road Allowance, Part 1, 57R-8393, geographic Township of Mariposa, now the City of Kawartha Lakes (the “subject property”). The property has frontage on Lake Scugog.

[2] The three minor variances that the Appellant is seeking relief from are:

- (i) Section 14.2.1.3(a) to reduce the front yard setback from 7.5 metres (“m”) to 0 m.
- (ii) Section 14.2.1.7 to reduce the minimum gross floor area from 93 square metres (“sq m”) to 86.9 sq m.
- (iii) Section 3.1.4.1(c) to permit unenclosed deck/porch with steps to project into an interior side yard such that the build features are 0.6 m from the east lot line whereas the by-law requires such projections to be at least 1.5 m from a lot line

[3] In determining the outcome of this appeal, the Tribunal must consider whether each variance satisfies all the four tests are set out in s. 45(1) of the *Planning Act* and that each variance is minor, desirable for appropriate development of the lands and that each variance maintains the general purpose and intent of the zoning by-law(s) and the official plan. Failure to satisfy any of the four tests is fatal to an application for a minor variance.

Concerns of the Participant

[4] The Member advised the Parties that there had been a further submission received from by Mark and Jo-Ann Wieleba of 43 Marsh Creek Road. This Member advised all present that copies of the submission are available to all Parties through the Case Coordinator at the request of the Parties. Mark and Jo-Ann Wieleba were not

present for this hearing. The Tribunal recognizes the concerns brought forth. It is felt that the relief being sought through the revisions presented by the Appellant will mitigate the negative impacts currently being experienced as outlined in both of their written submissions.

[5] Denitza Koev, City Solicitor opened by stating that the City and the CoA had no issues with the first two variances ((i) and (ii)) and further, there had been dialogue between the Appellant and the City regarding the outstanding variance since the CoA's decision was issued. Ms. Koev stated that the information would be shared with the Tribunal as the hearing continued.

Planning Evidence

[6] Kevin Duguay was hired by the Appellant in July 2019. Mr. Duguay was sworn in without objection as an expert planner to provide evidence to the Tribunal.

[7] Mr. Duguay informed the Tribunal the subject property is currently zoned RR3 – Rural Residential Type Three Zone by Zoning By-law No. 94-07 (the “Zoning By-law”) which permits Single detached dwellings and Vacation dwellings.

[8] Mr. Duguay identified the subject property as being waterfront with a naturalized shoreline, existing boathouse, existing building location and existing site parking/driveway.

[9] He informed the Tribunal that the garage on the subject property had been vacant for many years. The garage had been used by the neighbours to the east. Mr. Duguay mentioned that the garage had been converted by the Appellant into a three-season accommodation after he purchased the property. He stated that the said property relies upon private (water and waste water) services. The septic system on the property had been installed prior to the Appellant purchasing the subject property and that the Appellant had installed the well system since taking ownership.

[10] Mr. Duguay informed the Tribunal that the Appellant had installed a double door, that is fixed in nature, as well as a large window on the north side of the building facing the road frontage. The front yard requires an encroachment agreement with the City to approve variance (i) to reduce the front yard setback from 7.5 m to 0 m. Mr. Duguay confirmed the Appellant has started this process.

[11] Mr. Duguay pointed out that the proposed dwelling is approximately 86.9 sq m and is in fact, 6.04 sq m smaller than the minimum gross floor area of 93 sq m which is the maximum allowance per dwelling. Thus, satisfying the qualifications for variance (ii) to be approved under s. 14.2.1.7 of the Zoning By-law.

[12] Mr. Duguay provided a "Revised Concept Plan" illustrating an enclosed entrance, east side of the dwelling having a set back of 1.2 m from the east lot line. The original request was for a setback of 0.6 m. The resultant setback would be 0.3 m deficient from the minimum requirement of the Zoning By-law. In doing so, he suggested the revised plan would require a further variance. The amendment would also redirect the staircase from protruding in an easterly direction to one of a northerly direction. This would provide for an external door at the top of the staircase into an enclosed platform area.

[13] Ms. Koev requested clarification on the measurements of the east side yard property line to the exterior east side wall of the building structure as it appears in Proposed Porch Enclosure Attachment 5 of Exhibit 2. Mr. Duguay recognized that the 2.84 m as shown in Attachment 5 identifies the measurement as being from the property line to the protruding staircase and not the building wall of the structure. The Tribunal so notes the error and will request in its final Order that Mr. Duguay provide a corrected drawing to confirm the measurement is between the property line and the building wall.

[14] Mr. Duguay brought the Tribunal through his evidence citing the qualifying sections of the Official Plan, Provincial Policy Statement, 2014 ("PPS") and A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 ("Growth Plan"). Each of

the sections are outlined in Exhibit 3.

[15] Ms. Koev called David Harding, City Planner as a witness. Mr. Harding was sworn in as an expert planner without objection.

[16] Mr. Harding confirmed that in May 2018 the Appellant attended a pre-screening meeting and that they had met several times through the summer of 2018. An application was received in 2019 and Mr. Harding prepared a staff report for the CoA.

[17] The staff report concluded that variances (i) and (ii) as noted above, met the four tests of a minor variance and recommended they be granted. Mr. Harding recommended variance (iii), to permit an unenclosed deck/porch with steps projecting into the interior side yard such that the built features are 0.6 m setback from the east lot line, be denied. Mr. Harding stated that he had received written and verbal communication from the neighbours abutting the property to the east. The communication noted noise and privacy issues with having neighbouring bedroom windows directly across from the unenclosed deck/porch. Mr. Harding was of the opinion the variance was not minor in nature if the unenclosed deck/porch was used as a gathering place that negatively impacted the adjacent neighbour.

[18] Mr. Harding was asked by Ms. Koev if he would support the "Revised Concept Plan" amendment. He confirmed that, in his opinion an enclosed deck/porch would alleviate the noise factor and privacy issues. He confirmed that repositioning the staircase to face north would deter using the space for individuals to congregate along the property line.

[19] Mr. Harding expressed that he believes there would be sufficient space for an enclosed porch within the footprint of the existing concrete porch base. He believes that coupled with the relocation of the steps there would be sufficient buffering of pedestrian traffic as access to the building would be direct and closer to the building. He believes that the amended application would make variance (iii) minor in nature.

[20] Mr. Harding opined that the application otherwise meets the Zoning By-law and Official Plan for waterfront properties of similar size with seasonal accommodation. He stated the property has sufficient parking, and under the Waterfront Policy in the City's Official Plan is respective of the 30 m setback from water's edge.

[21] Mr. Harding commented that the intended use of the existing detached garage conversion into a single detached dwelling would meet the PPS policy directives and the Growth Plan.

[22] Ms. Koev asked Mr. Harding if the enclosed porch and relocation of the staircase in final design could, in fact, meet the side yard setbacks required in the Zoning By-law s. 14.2.1.3 should the third variance be required. Mr. Harding confirmed that if the enclosure including the exterior cladding was 1.3 m from the property line no variance would be needed.

[23] Mr. Duguay confirmed in the hearing that the Appellant would submit the final design using the existing 1.2 m by 1.2 m concrete porch base, with the inclusion of exterior wall cladding so that the full enclosure meets the requirements of the Zoning By-law s. 14.2.1.3 and confirmed no further variance will be sought regarding the enclosed porch structure and side yard setback.

ANALYSIS AND FINDINGS

[24] The Tribunal is confident that the application meets the PPS policy directives and the Growth Plan. In determining this matter, the Tribunal accepts and adopts the uncontested land use planning evidence and expert opinions provided by both Mr. Duguay and Mr. Harding. The Tribunal is persuaded by the evidence that the proposal promotes efficient use of land as a seasonal dwelling while maintaining the natural shore line and recreational use of rural lands.

[25] The Tribunal finds that through the evidence presented, that the variances meet the four tests as set out in s. 45 (1) of the *Planning Act*.

ORDER

The Tribunal orders that the appeal is allowed in part and the variances to Zoning By-law No. 94-07 are authorized subject to the following conditions:

- That all encroachments onto municipal property, namely the driveway, front building wall and fencing, have been addressed to the satisfaction of the City's Realty Services Division;
- That the proposed conversion of the existing detached garage into a single detached dwelling shall proceed in accordance with Site Plan A0, dated November 2019, appended to this Decision as Attachment 1
- That, notwithstanding s. 3.1.2.1 of the Township of Mariposa Comprehensive Zoning By-law No. 94-07, when relief is granted, it shall not be interpreted to permit an accessory building to be constructed any closer to the front lot line than 7.5 m;
- That the Appellant prepare a revised Attachment 5 of Exhibit 2 for submission to the City Planning Department to reflect correct measurements on the drawing and forward a copy to the Case Coordinator to ensure the file is accurate;
- That the Appellant as agreed satisfactory to all parties, submits a final design outline using the footprint of the existing 1.2 m by 1.2 m concrete porch base, inclusive of the exterior wall cladding for the enclosed porch so that the full enclosure meets the requirements of Zoning By-law No. 94-07 s. 14.2.1.3;
- The Appellant will, as agreed satisfactory to all parties, ensure that the access steps are oriented towards the driveway; and

[26] The Member may be spoken to should the need arise.

"D. Chipman"

D. CHIPMAN
MEMBER

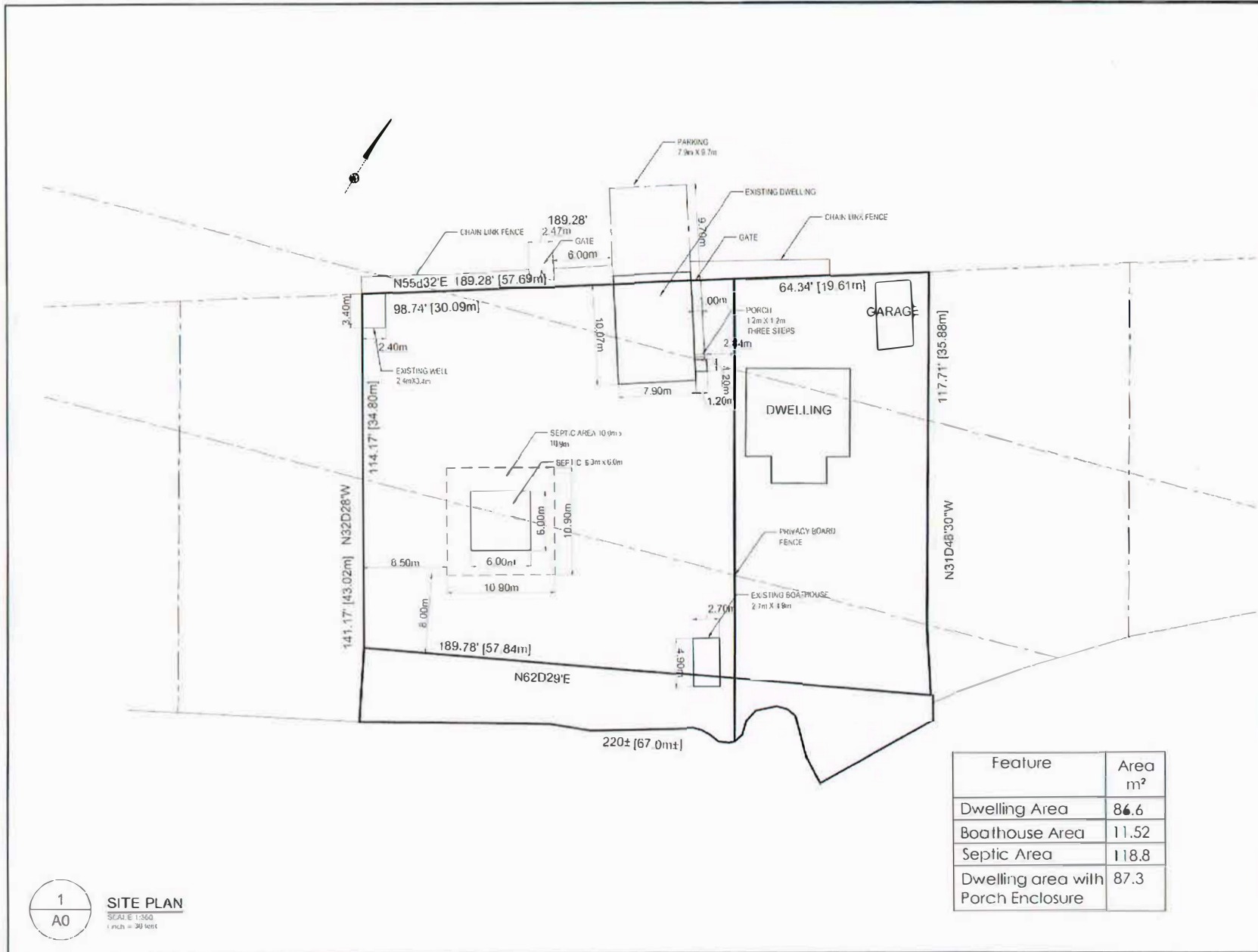
If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

SCHEDULE A



Feature	Area m ²
Dwelling Area	86.6
Boathouse Area	11.52
Septic Area	118.8
Dwelling area with Porch Enclosure	87.3

PLOTTED: DEC/21/2019

CLIENT:

Jay Hadi

PROJECT TITLE:

Proposed Porch
Enclosure

45 Marsh Creek Road
City of Kawartha Lakes, ON

DRAWING TITLE:

SITE PLAN



eco line
design
studio

36 Parkside street.
Minden
ON, K0M 2K0
BCIN 33321

email:

fabiennelshmann@yahoo.ca

tel: 705-875-0038

www.ecolinedesignstudio.com

Rev:

November 2019

PROJECT # **KMD File 2019-68**

Scale: As Shown

Drawn by Fabienne Lelievre
BCIN 28193

SHEET #

A0

1
A0

SITE PLAN
SCALE: 1/8" = 30 feet