

Case Name:

Robertson v. Bracebridge (Town)

Caroline Robertson and Jill Popkey have appealed to the Ontario Municipal Board under subsection 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to Zoning By-law 2006-120 of the Town of Bracebridge to rezone lands respecting 74 Richard Street from Residential Type 1 (R1) to Residential Type 1 Special -- 56 (R1-56) to permit all uses in the Residential Type 1 (R1) zone including one accessory apartment dwelling unit with each dwelling unit having a separate outdoor privacy area of 23 square metres, the minimum lot area to be 485 square metres, and the setbacks on the existing dwelling deemed to comply

[2014] O.M.B.D. No. 6

OMB File No.: PL130445

Ontario Municipal Board

Panel: M.A. Sills, Member

Decision: January 9, 2014.

(43 paras.)

Appearances:

Caroline Robertson and Jill Popkey, : N.D. Roche, counsel.

Town of Bracebridge: H. Elston, counsel.

Peter Bird.

DECISION DELIVERED BY M. A. SILLS
AND ORDER OF THE BOARD

1 Caroline Robertson and Jill Popkey ("Applicants/Appellants") have appealed from the refusal of the Council of the Town of Bracebridge ("Town") to approve a Zoning By-law Amendment ("ZBA") for the property located at 74 Richard Street ("subject property").

BACKGROUND

2 The subject property is a triangular-shaped parcel with frontage on Bird Lane (37.5 m) and Richard Street (26.7 m). The existing dwelling is a legal non-conforming structure which is deficient with respect to lot area (352.4 sq m vs. 555 sq m), front yard setback (2.76 m vs. 7.5 m -- Richard Street), east side yard setback (0.49 m vs. 7.5 m -- Bird Lane), interior side yard setback (2.05 m vs. 3.6 m), setback from road centre (7.3 m vs. 17.5 m -- Bird Lane) and (13.5 m vs. 17.5 m -- Richard Street).

3 The property is designated Residential by the Town of Bracebridge Official Plan ("TOP") and zoned Residential Type 1 (R1) by Zoning By-law No. 2006-120 ("ZBL"). The property is located within the Urban Centre designation of the District of Muskoka ("District") Official Plan ("DOP").

4 The purpose and effect of the proposed ZBA is to rezone the subject property to Residential Type 1 - Special 56 (R1-56) in order to permit all uses in the R1 Zone including one accessory apartment dwelling unit, on a lot having an area of 352.4 sq m with each unit having a separate outdoor privacy area of 23 sq m, and to recognize the existing dwelling setbacks.

5 The original home on the property was constructed in 1902. In 1977, there were considerable changes to the structure, but the footprint of the dwelling has not changed since that time.

6 In 1986, the then-owner applied to rezone the property to a duplex use. However, that application was never circulated because the Council of the day did not feel that the property was large enough to accommodate the duplex use. In 2012, the current owners illegally converted the garage area back to living space, effectively creating a second living unit.

7 The current application results from a complaint by a local resident who suspected that this location contained "multiple dwellings". As a result of this complaint, the Building Department directed the owners to either comply with the permitted use or to apply for permission to allow an accessory apartment unit.

8 Local resident Peter Bird requested and was granted Participant status. He told the Board that he was the complainant and is opposed to the rezoning of the property.

PLANNING EVIDENCE - APPLICANT

9 Town planner, Dana Rahkola, appeared under summons by the Applicants. He was responsible for preparing the staff planning report respecting this application, with the assistance of the Town's Senior Planner (M. Holmes).

10 Mr. Rahkola stated that the existing dwelling is a legal non-conforming structure which has existed in the same shape and form since 1977, and the existing footprint will not change regardless of whether or not the ZBA is approved. Furthermore, he contended that there have not been any issues with respect to compatibility or use since that time.

11 Mr. Rahkola told the Board that in conducting his planning analysis, he determined that the proposal conforms to the policies of the DOP and the TOP in that the use is permitted, it provides an alternative property ownership, and is compatible with the type and tenure of the surrounding area. The rezoning is in-keeping with the Community Based Strategic Plan, and the proposal meets the seven criteria established by the General Development Policies (Section B -- 6.2.1). His recommendation to Council was that the rezoning application should be approved.

12 Mr. Rahkola told the Board that in the case of a home with an accessory apartment dwelling unit, three parking spaces are required (i.e. one space for a single family home and 1.5 for a home with accessory apartment, rounded up to three).

13 Public Works originally had concerns about whether or not parking could be appropriately accommodated on the site; they were especially concerned about parking extending onto municipal property and the proximity of parking to the intersection at Richard Street and Bird Lane.

14 However, the Applicants subsequently submitted a sketch (Exhibit 3, Tab 11) showing that the site could accommodate three parking spaces as well as two outdoor privacy areas. This is to be achieved by the removal of existing sheds and/or a trampoline and some vegetation, and results in two separated driveway accesses along Bird Lane. Access permits will have to be obtained for this purpose. A permanent barricade will be required to prevent access to Richard Street from the parking space on the west side of the property. Public Works has since indicated that they have no objection to the proposed rezoning.

15 In response to inquiries from the Board, Mr. Rahkola stated that the conversion took place in September 2012, but it was not known whether or not both units were currently occupied.

16 John Gallagher, a professional planner and Member of the Canadian Institute of Planners and Ontario Professional Planners Institute, provided opinion evidence in support of the application.

17 In his evidence, Mr. Gallagher outlined several areas in which the proposal is consistent with the Provincial Policy Statement ("PPS") with respect to sustaining healthy, liveable and safe communities. Specifically, he pointed out that this is an efficient development within a mixed use residential area, currently serviced by municipal water and sewer; the connecting roads are maintained year-round by the municipality and there would be no environmental or public health and safety issues should the additional unit occur.

18 The site is located within a designated Settlement Area, where regeneration is to be promoted (s. 1.1.3.1). The proposal is consistent with the provision of an appropriate range of housing types to meet the requirements of current and future residents (s. 1.4) and supports the use of existing infrastructure and services.

19 The DOP encourages the provision of a wide array of housing opportunities, including housing that is affordable to a full range of income groups. The subject property is located in the Urban Centre designation and the proposal will provide additional rental housing opportunities. The proposal has been reviewed by District staff and they concur that the application meets these objectives, as well as the servicing requirements. The District Public Works and Planning Departments have confirmed that they have no objection to the proposed ZBA.

20 In the same vein, Mr. Gallagher set out several reasons why he feels that the proposal conforms to the TOP, and is consistent with good land use planning policies. He submitted that the TOP permits secondary units and directs and supports affordable housing options in the Urban Area. Both the local TOP and ZBL contain provisions intended to ensure a broad range of housing forms, types, and sizes. In this case, the proposal will create rental units within this urban residential area.

21 He contended that the existing building form is in scale and character with the neighbourhood and there are no plans for additions to the structure. There are other two-unit structures in the neighbourhood and higher density residential uses occurring nearby. Moreover, the immediate neighbours have no objection to the proposal. In his opinion, the proposal compliments the residential character and use of the building.

22 As part of the approval, two additional parking spaces will be required. Mr. Gallagher contended that "it has been shown" that there is adequate parking to serve the proposal and as a result, the concerns of Public Works have been addressed. There is an existing parking space off Richard Street which predates the by-law, and the proposal includes two new spaces with access off Bird Lane.

23 The concept site plan has been reviewed by Town planning staff, and they have confirmed that the lot is large enough to accommodate parking and outdoor privacy areas. The building can support the intensified use and will be subject to a change of use permit under the Ontario Building Code ("OBC").

24 In summary, it was his professional opinion that the proposal is consistent with the PPS, and the application conforms to the DOP and the TOP. He recommended approval of the proposed ZBA.

PLANNING EVIDENCE -- TOWN

25 Peter Neice is a registered professional planner and a Member of the Canadian Institute of Planners and the Ontario Professional Planners Institute. He provided contextual and opinion evidence on behalf of the Town.

26 Mr. Neice submitted that while he does not dispute that the proposal is consistent with PPS policies respecting efficient development and land use patterns, and the accommodation of an appropriate range and mix of housing types, "allowing second units is not appropriate in all cases or in all areas".

27 In this case, the proposal is not compatible with the surrounding single unit residential character of the area; the subject property is currently an undersized lot for a single dwelling unit and adding a second unit creates an unacceptably high density; and, compounded by the odd shape of the lot, both parking and driveway access will be difficult, hazardous, unsafe, and not in compliance with zoning by-law requirements. He contended that these are factors which are important in contributing to healthy and liveable communities as promoted by the PPS, and these will not be achieved by the proposal.

28 Mr. Neice referred the Board to the TOP General Development policies for Accessory Units, as follows:

6.2

Accessory Units

6.2.1 Where the Town permits accessory dwelling units in residential areas in the Urban Area, the following criteria shall be satisfied:

- i) The accessory unit is of a subordinate or secondary nature to the principle single detached use of the building;
- ii) The lot size and configuration are sufficient to accommodate adequate parking and outdoor privacy areas;

- iii) The building age and condition are capable of supporting the intensified use and the building code requirements can be met;
- iv) Any proposed building addition for an accessory unit satisfies the zoning requirements relative to height, setbacks, and coverage for the entire dwelling or lot and shall not detract from or alter the building form and/or character of the area;
- v) Availability of municipal services to accommodate the increased demand, including such services as water, wastewater, sanitary sewers, storm sewers and parkland;
- vi) The accessory unit may be part of an existing dwelling or may take the form of a detached dwelling; and
- vii) Sufficient parking is provided on site for the main and accessory uses.

29 Mr. Neice takes the position that the proposal fails to conform to each criterion, in the following manner:

- * s. 6.2.1 i) - the proposal does not constitute a "secondary" dwelling unit, accessory to, and contained within a single detached dwelling, but rather, comprises a pair of semi-detached or duplex dwelling units of roughly the same size and floor area.
- * s. 6.2.1 ii) - the property is an undersized, irregular-shaped lot, and parking and outdoor privacy areas will have to be located in the required side yard setbacks, putting them next to the street. None of the parking spaces proposed by the Applicants can comply with the location or separation from street line requirements.
- * s. 6.2.1 iii) -- as the additional unit was constructed without a permit, there is insufficient information available to determine whether the structure meets OBC standards.
- * s. 6.2.1 iv) -- even though the footprint of the home is not being changed,

the undersized nature of the lot in combination with the irregular lot shape and reduced setbacks is not consistent with the prevailing character of other properties in the area.

- * s. 6.2.1 v) - while wastewater and sanitary sewage services may be adequate, Public Works has indicated that storm drainage and access will need to be addressed. These are items that should be considered at the rezoning stage and no information or access permit has been supplied by the Applicants.
- * s. 6.2.1 vi) -- for reasons previously stated, the proposal is not accessory to the main dwelling.
- * s. 6.21 vii) - the location of parking does not comply with zoning requirements, as it must be located in the front and exterior side yards close to the street. The proposal will result in cramped on-site parking and a lack of recreational space.

30 Mr. Neice further contended that the proposal does not conform to certain of the Urban Area policies set out in Section C of the TOP. For instance, with two units, the proposed development will exceed the maximum permitted density of 16 units per acres for even medium density development (s. 3.10 ii)). As well, the lack of adequate parking and non-compliance with parking location and layout requirements prescribed by the ZBL will interfere with traffic flow on the abutting streets (s. 3.11 ii)). Moreover, the proposed driveway accesses and parking locations will interfere with pedestrian use of the sidewalk along the east side of Bird Street.

31 In summary, it was Mr. Neice's professional opinion that the application does not conform to key planning objectives and policies of the TOP for the Urban Area designation. The application does not conform as a secondary or accessory apartment dwelling unit, nor does it conform as a semi-detached and/or multiple unit type development.

32 The proposed units do not represent an accessory dwelling unit to the single detached dwelling (which is usually owner-occupied). The property is undersized for a single-detached dwelling; it is an undersized property for the density and two unit activity proposed, and, to allow a second unit would be an over-intensive use of the property. Sufficient parking and access cannot be provided due to the lot configuration and parking cannot meet prescribed regulations for location and separation from the street.

CONCERNS OF THE PARTICIPANT

33 Mr. Bird, who resides at 19 Bird Lane, is a licensed architect and professional engineer. He told the Board that his grandfather was the original owner of a two-block area of land in which the subject property is located. These lands were developed as a sub-division, which he designed. He filed a non-compliance complaint with the Town after he became aware that two sets of family's were residing in the subject home, in August 2012.

34 Mr. Bird testified that he routinely walks past the subject dwelling to access the group mailboxes located at the corner of Bird Lane and Richard Street. He stated that he has observed up to four parked vehicles on the property, and by times, has had to leave the sidewalk to get around parked cars and garbage and recycle receptacles. Mr. Bird provided the parking diagram entered in evidence by the Town (Exhibit 3, Tab 11).

ANALYSIS AND DISPOSITION

35 The Board, in having reviewed and considered the oral and documentary evidence of the parties and the submissions of counsel, finds that the rezoning proposal fails to conform to the spirit and intent of certain policies of the TOP. More importantly, the Board is not convinced that the proposal is consistent with the principles of good land use planning, nor can it be seen to have sufficient regard for the public safety and interest.

36 Primarily, the Board is not satisfied that the parking solution being proposed is either practical or achievable. Among other things, in order for the Board to approve the rezoning of the property, it must be convinced that in doing so, the public safety and interests have not been and/or will not be compromised. Based on the evidence before me, or lack thereof, the Board is not persuaded in either regard.

37 The ZBA which is the subject of this appeal does not provide for a reduced standard with respect to the provision of on-site parking. In fact, it implicitly sets out that "All other applicable provisions of the Residential Type 1 (R1) Zone shall continue to apply in respect to the lands located within the Residential Type 1 Special -- 56 (R1--56) Zone". Accordingly, three standard on-site parking spaces are required.

38 In this regard, the Board had before it two illustrations; the first, a free-hand rendition submitted by the Applicants denoting the siting of the existing home and the proposed parking areas (Exhibit 3, Tab 11, p. 66); the second, a calibrated site drawing provided by Mr. Bird (Exhibit 3, Tab 11, p. 72). The drawing at page 66 would make it appear that the required number of parking spaces (three) can be accommodated on-site, while the drawing at page 72 illustrates that at most, only one conforming parking space is achievable.

39 In the first instance, in comparing the two conflicting parking diagrams the Board is not persuaded that the required parking can be accommodated on the lot in the manner being proposed by the Applicants. While it is recognized that the existing home and parking function represents a legal non-conforming use, clearly, both the current Council and the Council in 1986 were not

prepared to further exacerbate the non-conforming uses of the property. From a planning perspective, the Board cannot rebuff this rationale.

40 Moreover, given the proximity of the existing west parking area access to the intersection, in combination with the location of the group mailboxes and the necessity for the second access point, the Board is not satisfied that the public safety is being sufficiently protected.

41 Notwithstanding that the west parking area is to some degree an existing situation, the Board is concerned that the additional parking and accesses required by the proposed change in use will increase the potential for conflict between pedestrian and vehicular traffic. It is noteworthy that the photos submitted by the parties, particularly those found at Tab 9 of Exhibit 3, only served to reinforce the Board's concern with respect to the issue of the public safety.

42 In my view, by virtue of the shape and dimensions of the subject property along with the existing zoning standard deficiencies, permitting a second living/dwelling unit at this location is not conducive to the principles of good land use planning.

ORDER

43 The Board orders the appeal is dismissed.

M.A. Sills, Member

qp/e/qlspi