

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



ISSUE DATE: September 08, 2020

CASE NO(S): PL190104

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 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Amanda Steinhoff-Gray
Subject:	By-law No. B-41-18-26
Municipality:	Municipality of Kincardine
LPAT Case No.:	PL190104
LPAT File No.:	PL190104
LPAT Case Name:	Steinhoff-Grey v. Kincardine (Municipality)

Heard: In writing

APPEARANCES:

Parties

Counsel*/Representative

Amanda Steinhoff-Gray

Self-Represented

Municipality of Kincardine

Tammy Grove-McClement*

Donald Karn

Self-Represented

DECISION DELIVERED BY DAVID BROWN AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The matter before the Tribunal is in respect to an appeal filed by Amanda

Steinhoff-Gray (the "Appellant") pursuant to s. 34(19) of the *Planning Act* (the "Act") in respect to a Zoning By-law Amendment No. 2019-021 (the "ZBA") passed by the Municipality of Kincardine (the "Municipality"). The lands, which are the subject of the ZBA, are owned by Donald Karn (the "Applicant") and comprised of the lands at 30 Rae Street and a severed parcel from the abutting lands at 128 King Street, which has been attached to the 30 Rae Street lands (the "Subject Lands").

[2] The ZBA will permit the development of the Subject Lands with 28 semi-detached dwelling units contained within 14 buildings and one single detached dwelling unit (the "Proposed Development") in the settlement of Tiverton.

[3] The Municipality notified the Tribunal in advance of the hearing that a Settlement has been reached between the Parties. The Municipality submitted a copy of the Minutes of Settlement with the Tribunal, which were filed as Exhibit 1. An Affidavit from Daniel Kingsbury, Senior Planner with the County of Bruce Planning and Development Department, was submitted by the Municipality in support of the Settlement and the Proposed Development. The Affidavit was marked as Exhibit 2. An Acknowledgement of Expert's Duty executed by Mr. Kingsbury was also submitted as required by the Tribunal's Order issued May 7, 2020, in respect of this matter.

[4] The Tribunal conducted the hearing event in writing in accordance with Rule 21 of the Tribunal's *Rules of Practice and Procedure*.

[5] The Tribunal, in consideration of the Minutes of Settlement, the supporting Affidavit of Mr. Kingsbury, and the materials filed, allows the appeal in part and grants the approval of the ZBA, as amended, as set out in the Minutes of Settlement for the reasons that follow.

LEGISLATIVE FRAMEWORK

[6] On November 15, 2019, Ontario Regulation 382/19 ("O. Reg. 382/19") was

enacted to amend Ontario Regulation 303/19 (“O. Reg. 303/19”). O. Reg. 303/19 prescribes the transition of the Act appeals from the former Bill 139 (the Act as it read on September 2, 2019) framework to the current Bill 108 (the Act as it read on September 3, 2019) framework. While O. Reg. 382/19 has the effect of returning this matter to the hearing format prescribed by Bill 139, the appeal provisions contained within the Act applicable here were not changed by the amending Regulation and therefore this appeal continues to be subject to the provisions of the Act as it read on September 3, 2019 (i.e., after Bill 108 took effect). In summary, for this matter the *Local Planning Appeal Tribunal Act* hearing format is under Bill 139 and the *Planning Act* appeal is under Bill 108.

[7] As the Parties have reached a settlement, the provisions of the Act that apply to the manner in which the Tribunal may dispose of the appeal are found in s. 34(26) of the Act:

34(26) The Tribunal may,

- (a) on an appeal under subsection (11) or (19), dismiss the appeal;
- (b) on an appeal under subsection (11) or (19), amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the by-law in accordance with the Tribunal’s order; or
- (c) on an appeal under subsection (19), repeal the by-law in whole or in part or direct the council of the municipality to repeal the by-law in whole or in part in accordance with the Tribunal’s order.

ANALYSIS AND FINDINGS

[8] The Tribunal accepts the uncontroverted planning evidence of Mr. Kingsbury in support of the Minutes of Settlement and the approval of the ZBA with the amendments proposed.

[9] The Tribunal accepts the conclusions of Mr. Kingsbury and finds that the ZBA, including the proposed amendments, is consistent with the Provincial Policy Statement, conforms to the County of Bruce Official Plan and the Municipality Official Plan, has

regard for the matters of provincial interest as enumerated in s. 2 of the Act and in consideration of the foregoing represents good planning.

[10] The Minutes of Settlement included the following amendment to the ZBA:

- a) Replace paragraph 3(v) of the Decision to read as follows:
 - v) The 'H - Holding' provision may be removed when Council is satisfied that the following condition has been met:
 - a) That a Site Plan Agreement has been entered into between the owner and the municipality and registered on title to the Lands, which includes:
 - i) the erection of a wood privacy fence along the north lot line of the Lands and the planting of 3 maple trees at locations at or near the fence on the Lands, said locations to be determined by the Applicant; and
 - iii) the installation of a stop sign for traffic entering onto Rae Street from the Lands.
- b) Add to paragraph 3 of the Decision the following:
 - vi) The Lands are subject to stormwater management, which shall be approved by Saugeen Valley Conservation Authority and the Municipal Engineer in accordance with appropriate plan(s) and report(s) submitted by the Applicant.

[11] The Tribunal finds that these amendments are appropriate and orders that By-law No. 2019-021 of the Municipality be amended in the form as set out in Exhibit "C" attached to the Affidavit of Mr. Kingsbury.

DECISION

[12] The Tribunal Orders that the appeal is allowed in part and approves the amended Zoning By-law No. 2019-021 as set out in Attachment 1 to this Order (Exhibit "C" of the Tribunal's Exhibit 2).

[13] This is the Order of the Tribunal.

"David Brown"

DAVID BROWN
MEMBER

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

Local Planning Appeal Tribunal

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ATTACHMENT 1

No. 2019 - 021

**BEING A BY-LAW TO AMEND ZONING BY-LAW NO. 2003 - 25, BEING THE
COMPREHENSIVE ZONING BY-LAW FOR THE MUNICIPALITY OF
KINCARDINE**

Harrison Machan c/o Karn

Plan 76 Part Lot 31; Plan 210 Part Lot 73 to 75; Parts 2 and 5 of Registered Plan 3R8163 and Plan 76, Part Lot 29 and Part 3 of Registered Plan 3R8919, Municipality of Kincardine (geographic Village of Tiverton)

WHEREAS Section 34 of the Planning Act, R.S.O 1990, Chapter 13 authorizes the Councils of Municipalities to enact and amend zoning by-laws which comply with an approved official plan;

AND WHEREAS the Council of The Corporation of the Municipality of Kincardine has enacted By-law No. 2003 - 25, a zoning by-law enacted under Section 34 of the said Planning Act;

AND WHEREAS the Council of The Corporation of the Municipality of Kincardine desires to amend By-law No. 2003 - 25;

NOW THEREFORE the Council of The Corporation of the Municipality of Kincardine **ENACTS** as follows:

1. Schedule 'A' to By-law No. 2003 - 25 as amended, is hereby amended by changing thereon from 'Residential One Special (R1-aa)' Zone to 'Residential Two Special Holding (R2-g-H)' Zone on those lands described as Plan 76 Part Lot 31; Plan 210 Part Lot 73 to 75; Parts 2 and 5 of Registered Plan 3R8163, Municipality of Kincardine, (geographic Village of Tiverton) as outlined on the attached Schedule 'A'.
2. Schedule 'A' to By-law No. 2003 - 25 as amended, is hereby further amended by changing thereon from 'Residential One (R1)' Zone to 'Residential Two Special Holding (R2-g-H)' Zone on those lands described Plan 76, Part Lot 29 and Part 3 of Registered Plan 3R8919, Municipality of Kincardine (geographic Village of Tiverton) as outlined on the attached Schedule 'A'.
3. By-law No. 2003 - 25 as amended, being the Comprehensive Zoning By-law for the Municipality of Kincardine, is further amended by adding the following paragraph, as follows:

13.4.7 (Special Provisions) Notwithstanding any other provision of this By-law, those lands zoned R2-g-H shall be used in accordance all relevant provisions of the Zoning By-law, excepting however that the 'R2' zone provisions shall be replaced with the following:

(i) Permitted Uses:

- (a) A maximum of 28 semi-detached dwellings (14 buildings x 2 units);
- (b) A maximum of one detached dwelling;

Amendment to Comprehensive Zoning By-law 2003-25, (Plan 76 Part Lot 31; Plan 210 Part Lot 73 to 75; Parts 2 and 5 of Registered Plan 3R8163 and Plan 76, Part Lot 29 and Part 3 of Registered Plan 3R8919, Municipality of Kincardine (geographic Village of Tiverton)), By-law
By-law 2019 - 021

(ii) Zone Provisions for Semi-detached Dwellings: as identified on Site Plan dated February 2018, Revision 3 September 2018.

- (a) A minimum setback of 6.0 metres shall be provided between the front of the dwelling and the paved private road, with said setback hereby referred to as the "front yard".
- (b) A minimum setback of 4.8 metres shall be provided between the side of the dwelling and the paved, private road where said dwelling abuts two private streets, with said setback hereby referred to as the "exterior side yard".
- (c) A minimum setback of 6.7 metres shall be provided between the rear of the dwelling and the exterior property boundary, with said setback hereby referred to as the "rear yard".
- (d) Notwithstanding paragraph (c) above, the required "rear yard" of one pair of semi-detached dwellings adjacent to the property's easterly lot line shall be reduced to 4.5 metres.
- (e) A minimum of 2.8 metres shall be provided between the side of Unit 6 and the exterior property boundary.
- (f) A minimum separation distance of 3.5 metres shall be provided between buildings containing semi-detached dwellings
- (g) The maximum building height shall be 10.5 metres;

(iii) Zone Provisions for Single-detached Dwellings: as identified on Site Plan dated February 2018, Revision 3 September 2018.

- (a) A minimum setback of 3.0 metres shall be provided between the front of the dwelling and the paved private road, with said setback hereby referred to as the "front yard".
- (b) A minimum setback of 6.0 metres shall be provided between the side of the dwelling and the paved, private road where said dwelling abuts two private streets, with said setback hereby referred to as the "exterior side yard".
- (c) A minimum setback of 4.3 metres shall be provided between the rear of the dwelling and the exterior property boundary, with said setback hereby referred to as the "rear yard".
- (d) The maximum building height shall be 10.5 metres;
- (e) The driveway shall be located to the north of the dwelling (i.e. between the dwelling and Rae Street).

(iv) The lands shall be subject to Site Plan Control

(v) The 'H – Holding' provision may be removed when Council is satisfied that the following condition has been met:

- a) That a Site Plan Agreement has been entered into between the owner and the municipality and registered on title to the Lands, which includes:
 - i) the erection of a wood privacy fence along the north lot line of the Lands and the planting of 3 maple trees at locations at or near the fence on the Lands, said locations to be determined by the Applicant; and
 - iii) the installation of a stop sign for traffic entering onto Rae Street from the Lands

(vi) The Lands are subject to stormwater management, which shall be approved by Saugeen Valley Conservation Authority and the

Amendment to Comprehensive Zoning By-law 2003-25, (Plan 76 Part Lot 31; Plan 210 Part Lot 73 to 75; Parts 2 and 5 of Registered Plan 3R8163 and Plan 76, Part Lot 29 and Part 3 of Registered Plan 3R8919, Municipality of Kincardine (geographic Village of Tiverton)), By-law
By-law 2019 - 021

Municipal Engineer in accordance with appropriate plan(s) and report(s) submitted by the Applicant.

4. By-law No. 2003 - 25 as amended, being the Comprehensive Zoning By-law for the Municipality of Kincardine, is further amended by changing the paragraph, as follows from:
 - 12.3.26(ii) The minimum lot area shall be no less than 3.76 ha;
 - To
 - 12.3.26(ii) The minimum lot area shall be no less than 2.74 ha;
5. This By-law takes effect from the date of passage by Council and comes into force and effect pursuant to the provisions of the Planning Act, R.S.O. 1990.
6. This By-law may be cited as the "Amendment to Comprehensive Zoning By-law 2003 - 25, (Plan 76 Part Lot 31; Plan 210 Part Lot 73 to 75; Parts 2 and 5 of Registered Plan 3R8163 and Plan 76, Part Lot 29 and Part 3 of Registered Plan 3R8919, Municipality of Kincardine (geographic Village of Tiverton)), By-law".

APPROVED BY Local Planning Appeal Tribunal Minutes of Settlement Case No.: PL190104 dated ___ June, 2020

READ a FIRST and SECOND TIME this 20th day of February, 2019.

READ a THIRD TIME and FINALLY PASSED this 20th day of February, 2019.

Mayor

Clerk