

Minor Variance Report

Application No.: A-03-24
Applicant: Edward Joseph and Halinka Christina Dybka
Agent: Holly Richards-Conley
Property Description: Part Lot 32, Con. 9 (Dummer)
1442 Miles Shore Road E
1522-020-005-44800

Purpose of Application:

The subject property is zoned Limited Service Residential (LSR) as illustrated on Schedule B9 to By-law No. 10-1996, as amended.

The Owners received consent from Peterborough County Land Division for a lot addition, File B-70-23 and the Certificate was issued on June 21, 2024. The Owners now wish to demolish the existing two-storey detached dwelling with a ground floor area of 182.3 square metres and construct a new two-storey detached dwelling with a ground floor area of 286.48 square metres.

The new dwelling is proposed to be located generally within the footprint of the foundation of the existing dwelling and will not be located any closer to the water than currently exists. The existing dwelling is non-complying with a water yard setback of 12.7 metres and the new construction is proposed to be setback 13 metres. Given the substantial demolition and change in shape, size and floor area, the proposed construction will no longer enjoy non-complying status and requires relief from the By-law to recognize a reduced water yard setback.

The purpose of the minor variance is to permit a reduction of the 30 metre water yard setback for the proposed new construction, recognizing the existing deficient water yard with the closest point being setback 13 metres and no further encroachment being made, as shown on the site plan prepared by JBF Surveyors, dated October 30, 2024 and attached to this Report.

The proposed development also includes the demolition of two sheds, the rebuilding of a two-storey frame building by the water, the installation of a new septic to the east of the proposed dwelling, and the construction of an approximately 105 square metre detached accessory garage, all of which are not part of the minor variance application.

Notice of the public meeting was given on November 13, 2024 by ordinary mail and/or e-mail to all prescribed persons and public bodies and to every person and public body that has provided a written request for Notice.

Notice of the public meeting was circulated by ordinary mail to every owner of land within 60 metres of the subject property on November 13, 2024. Signs were posted on the subject property on the water frontage, on the property at the intersection of Miles Road and Miles Shore Road East and on the County Road 6 frontage at the entrance to Miles Road. The Notice was also posted on the Township Website.

The giving of Notice complies with the applicable Regulation of the Planning Act.

Agency Comments:

Comments were received from Otonabee Region Conservation Authority (ORCA). A copy of ORCA's comments are attached to this Report and further referenced below.

As of the writing of this Report, there have been no additional written or verbal comments received from the prescribed persons or public bodies.

Public Comments:

As of the writing of this Report, there have been no written or verbal comments received from members of the public.

Staff Comments:

The application was circulated to Senior Staff on November 13, 2024. As of the writing of this Report, there were no concerns identified by Senior Staff.

Pre-Consultation:

A pre-consultation meeting was held on November 23, 2023. The meeting included Township Staff; Holly Richards-Conley, Agent; Marnie Guindon, Otonabee Region Conservation Authority (ORCA) and Ken Scullion, County of Peterborough.

The pre-consultation identified additional information to be provided regarding the final proposal along with potential supporting study requirements for a complete Planning Act application.

In particular, ORCA noted the subject property is regulated due to the presence of floodplain from Stony Lake which is confined mostly to the shoreline and there is potential for a slope hazard. It was stated that it would be important to keep all of the vegetation along the slope because it is helping to stabilize the slope. ORCA requested to undertake a site visit to examine the slopes.

Following the site visit, ORCA stated that since the entire slope is proposed to be regraded to accommodate a walkout, a slope stability study as well as engineered drawings would be required. A Geotechnical Investigation Report was prepared by Cambium Inc., dated March 12, 2024, and submitted in support of the application. A copy is attached to this Report. Permit No. 2024-215 was issued by ORCA on October 31, 2024, for the proposed work and a copy is attached to this Report.

The property is adjacent to Stony Lake. Since the existing dwelling was constructed in approximately 1890, it is likely that no archaeological assessment was undertaken at that time. Therefore, archaeological potential exists and a Stage 1 and 2 Archaeological Assessment was requested.

The Owners engaged Northeastern Archaeological Associates Limited (Northeastern) who completed a Stage 1 and 2 Assessment of the entire property. The Assessment dated November 5, 2024, noted that Stage 1 research indicated the property is of high archaeological potential, as outlined by the Standards and Guidelines for Consulting Archaeologists (MTC 2011), because of its proximity to water and registered archaeological sites as per standard 1.3.1.

The Stage 2 Assessment did not result in the discovery of any material of cultural significance. Given this, Northeastern recommended that no further archaeological assessment be required on the subject property. If any archaeological resources should be discovered during the course of development, all excavation must stop immediately, and an archaeologist must be contacted.

At the time of the pre-consultation in 2023, the Growth Plan for the Greater Golden Horseshoe was applicable and a Natural Heritage Evaluation that identified a 30 metre Vegetation Protection Zone (VPZ) was required. However, Staff noted that the proposed Provincial Planning Statement no longer contained the 30 metre VPZ requirement although the Province had not provided a timeline for approval of the new legislation.

Effective October 20, 2024, the Growth Plan and the Provincial Policy Statement were consolidated into one document called the Provincial Planning Statement (PPS, 2024). The PPS, 2024 is considered a policy statement for the purpose of Section 3 of the Planning Act. All municipal decisions, as well as comments, submissions or advice affecting planning matters, are required to be consistent with the PPS, 2024 pursuant to subsections 3(5) and 3(6) of the Planning Act.

A Planning Justification Report (PJR) was prepared by Kevin M. Duguay, Community Planning and Consulting Inc., in support of the Application. The PJR reviewed the policies of the PPS, 2024 and concluded the Application is consistent with the policy directives. A copy of the PJR is attached to this Report.

Since the proposed dwelling is not completely being built on the same footprint, Township Staff identified that justification would be required as to why the proposed structure cannot be built on the same footprint and why the proposed dwelling cannot be setback further away from the deficient water setback. The PJR states that the proposed building location does not reduce the existing water yard setback. The proposed building location is influenced by:

- The existing right-of-way traversing the property;
- Existing overhead hydro lines; and
- Topographical features.

The PJR concluded that the Application successfully addresses the four (4) tests for evaluating a minor variance application as set forth in Section 45 (1) of the Planning Act.

Planning Review:

Section 45 of the Planning Act provides the tests that must be satisfied to support a minor variance application. The tests are as follows:

1. Does the minor variance maintain the general intent and purpose of the Official Plan?

The subject property is designated Lakeshore Residential and the portion subject to severance file B-70-23 is designated Rural on Schedule 'A4-3' to the Official Plan (OP). Amendments to the OP are not required for minor deviations from the land use designation boundaries (S. 8.1 (d)), therefore Staff have applied the Lakeshore Residential designation to the entire property.

The Lakeshore Residential designation permits permanent single detached dwellings and cottages on private roads subject to the provisions of the Zoning By-law (Ss. 6.2.6.1).

Section 6.2.6.3 (c) states that the preservation of naturally-vegetated shoreline is encouraged in order to minimize destruction to the shoreline and wetbeach habitat, minimize visual impact on the waterbody, maintain wildlife habitats and corridors and improve water quality. The Application submission includes a Shoreline Restoration Plan which states the majority of the property will remain untouched during the demolition and construction of the new dwelling. While some small cedars and one large mature white pine will be removed, the planting plan provided in Appendix 1 indicates sweet gale and white cedar are proposed to replace the vegetation that will be removed. A copy of the Shoreline Restoration Plan is attached to this Report.

Section 6.2.6.3 (c) of the OP states that "structures legally existing as of the date Official Plan Amendment No. 3 comes into effect (October 22, 2008) that do not comply with the required water setback provision that require replacement due to structural defects or destruction by fire or other natural causes or by permission of the Township will be permitted to be replaced on the same footprint and may only be enlarged in accordance with the provisions of the Zoning By-law, and where the enlargement does not further encroach into the 30 metre water setback."

As noted in the PJR and on the JBF survey, the proposed construction will not further encroach into the 30 metre water setback.

Section 6.2.6.3 (c) of the OP permits open decks to encroach into the 30 metre setback provided it is demonstrated the encroachment does not negatively affect the waterfront environment. The JBF survey illustrates that the closest development to the shoreline will be the proposed open deck with a set back of 13 metres. The proposed dwelling will be setback further at 14 metres. The shoreline restoration plan together with the

conditions of ORCA permit No. 2024-215 will ensure the waterfront environment is maintained.

Section 6.2.6.3 (c) of the Official Plan further states “minor variances or zoning changes to accommodate proposed expansions of a structurally-permanent nature to existing structures and/or septic systems that further reduce any applicable minimum water setback shall not be permitted unless it is a matter of public health and/or safety.” The JBF survey illustrates that the proposed septic system will meet the minimum 30 metre water yard setback.

Section 4.4.3 of the OP states that “local municipalities may authorize minor variances from the 30 metre setback requirement, without the variance being considered to be inconsistent with the general intent and purpose of the local plan, in the following situations:

- on a lot existing on the date this Official Plan Amendment No. 3 comes into effect;
- the addition to an existing building.”

Given the subject property (lot) existed on the date OPA No. 3 came into effect (October 2008), and the proposed construction is generally located on the same footprint, is not further encroaching into the 30 metre setback, a shoreline restoration plan has been provided and an ORCA permit issued, the proposed variance meets the general intent and purpose of the Official Plan.

2. Does the minor variance maintain the general intent and purpose of the Zoning By-law?

The subject property is zoned Limited Service Residential (LSR) as illustrated on Schedule B9 and amended by By-law No. 2024-01. A single detached recreation dwelling is a permitted use in the (LSR) Zone (S. 7.1.1) and must comply with the regulations outlined in Section 7.2.1 of By-law 10-1996, as amended.

The existing dwelling is considered a non-complying structure since it does not meet the required 30 m water yard setback (Ss. 7.2.1 (h) & 22.156).

The Owners desire to demolish the entire dwelling and while the new dwelling is proposed on part of the existing footprint, it will not be the same shape, size or floor area and therefore the dwelling will lose its non-complying status. As a result, Section 3.28 of the By-law (Non-Complying Buildings or Structures) would no longer be applicable.

While the By-law requires a minimum water yard setback of 30 metres, the closest point of the existing structure is setback 12.7 metres. The proposed construction will be setback a minimum of 13 metres at the closest point. To provide some flexibility for the development, Staff recommend that the variance recognize the existing setback of 12.7 metres. In all other respects, the proposal complies with the Zoning By-law and the application meets the general intent and purpose of the Zoning By-law.

3. Is the proposed use desirable for the appropriate development or use of the land?

The proposed use is desirable and appropriate to the development of the subject land.

The PJR identifies that the 30-metre minimum water yard setback cannot be complied with under Section 7.2.1(h) of the Township's Zoning By-law due to:

- The existing right-of-way traversing the property;
- Existing overhead hydro lines; and
- Topographical features.

While the existing right-of-way was released under PE417341, the overhead utility lines still impact the proposed dwelling from locating further away from the shoreline. As illustrated on the attached site plan, the existing cottage is located 12.7 metres from the edge of the water at its closest point. The proposed cottage will be located 13 metres from the edge of the water, representing an improvement to the existing standard for the new development.

The expansion/enlargement will be located to the rear (south) and east side of the existing cottage and further away from the water. The air photo attached to this Report along with the photos provided in the Shoreline Restoration Plan illustrate the location of the proposed construction will not impact the view of the lake from adjacent properties and the proposed dwelling will be appropriately screened from surrounding properties.

The Geotechnical Investigation Report determined the slope is deemed to have low potential for instability. Since the slope is comprised of bedrock, no setbacks were required from a geotechnical perspective. Cambium states that "provided all footings for the proposed structure are founded on the shallow unweathered bedrock, the loading of the new development will have no detrimental impact on the slope and vice versa. If the bedrock is sloped, any foundation footings/piers should be dowelled/anchored into clean bedrock."

The Report recommends that "a Cambium Technician be on Site to inspect the bedrock at footing depth prior to placement of footings and the basement slab to ensure that the subsurface conditions are similar to those identified during this inspection and that the bedrock is adequately unweathered, and free of voids and fractures. Cambium can also inspect the bedrock to estimate bearing capacity values and inspect dowels/anchors."

Given the findings and recommendations of the Geotechnical Investigation Report and the Shoreline Restoration Plan, Staff recommend that the issuance of a building permit include the recommendations of the Geotechnical Investigation Report and that prior to the building permit final inspection being given, the Township's Chief Building Official is satisfied that the Shoreline Restoration Plan attached to this Report has been implemented.

4. Is the variance minor?

The proposed variance is minor in nature.

The PJR identifies that proposed development will otherwise conform with the regulatory provisions of the Township Zoning By-law.

The required minimum water yard setback is 30 metres. The existing two-storey frame dwelling is set back 12.7 metres at the closest point and represents a non-complying structure. The proposed dwelling will be setback 13 metres, increasing the water yard setback by 30 centimeters.

Conformity to PPS, 2024:

In their correspondence dated November 19, 2024, ORCA states the Geotechnical Investigation Report has determined the slope is stable and to have low potential for instability. The reconstruction of the dwelling will remove the shoreline slope hazard and tie the foundation into the underlying bedrock. Therefore, ORCA is of the opinion that the application is consistent with Section 5 of the Provincial Policy Statement (PPS) [referencing the protection of public health and safety].

Application of Four Tests:

The Committee should state in the decision how the application meets/or does not meet the four tests:

- 1) The application is (or is not) minor in nature.
- 2) The application is (or is not) desirable and appropriate to the development of this land.
- 3) The application meets (or does not meet) the general intent of the Official Plan.
- 4) The application meets (or does not meet) the general intent of the Zoning By-law.

Summary:

The Committee will need to decide if the request is considered minor, that it is desirable and appropriate development of this parcel, and that the use intended meets the general intent of the Official Plan and Zoning By-law.

After hearing public comment and considering all written submissions, the Committee has the following options:

1. approve the minor variance with no conditions;
2. approve the minor variance with conditions;
3. defer the minor variance for further consideration at a later date; or
4. reject the minor variance.

Recommendation:

That the Committee review and consider all verbal and written comments received regarding Minor Variance Application File A-03-24;

That the Committee approve Minor Variance Application A-03-24 to recognize a minimum water yard setback of 12.7 metres, for the life of the structure, to facilitate the issuance of a building permit for the construction of a new, two-storey detached dwelling with a gross floor area of approximately 440.64 square metres as shown on the site plan prepared by JBF Surveyors, dated October 30, 2024 attached to the Decision as Schedule 'A' and to bring the proposed construction into compliance with the Zoning By-law.

This variance is deemed to be minor in nature and is appropriate for the development of this land. The application maintains the general intent and purpose of the Official Plan and Zoning By-law. Approval is conditional on the following:

- i. Obtaining any necessary permits from ORCA, Douro-Dummer Building Department and any other required ministry/agency;
- ii. That the issuance of a building permit for the proposed dwelling include the following recommendations of the Geotechnical Investigation Report prepared by Cambium Inc., dated March 12, 2024:
 - a) a Cambium Technician be on Site to inspect the bedrock at footing depth prior to placement of footings and the basement slab to ensure that the subsurface conditions are similar to those identified during this inspection and that the bedrock is adequately unweathered, and free of voids and fractures. Cambium can also inspect the bedrock to estimate bearing capacity values and inspect dowels/ anchors.
- iii. That verification from an Ontario Land Surveyor be provided to the Township's Chief Building Official after the structures are framed to confirm that all applicable setback requirements have been met and to ensure compliance with any relief granted by this decision of the Committee;
- iv. That prior to the building permit final inspection being given, the Township's Chief Building Official is satisfied that the Shoreline Restoration Plan attached as Schedule 'B' to this Decision has been implemented; and
- v. That if any archaeological resources should be discovered during the course of development, all excavation must stop immediately, and an archaeologist must be contacted.

Report Approval Details

Document Title:	A-03-24 (Dybka-Richards-Conley).docx
Attachments:	<ul style="list-style-type: none"> - A-03-24 - Meeting Notice.pdf - A-03-24 - Application_Redacted.pdf - A-03-24 9097_SKETCH-For Submission(1) (Site Plan).pdf - A-03-24 8785_SRPR1 (Surveyor's Real Property Report).pdf - A-03-24 Planning Justification Report.pdf - A-03-24 Cambium 2024-03-14 RPT - GEO - Miles Shore Road.pdf - A-03-24 Elevation.pdf - A-03-24 - Air Photo.pdf - A-03-24 Shoreline Restoration Plan-Dybka V2.pdf - A-03-24 ORCA Permit PPRD-2599 1442 Miles Shore Road East 2024-215 SIGNED AND AUTHORIZED.pdf
Final Approval Date:	Nov 21, 2024

This report and all of its attachments were approved and signed as outlined below:

Martina Chait-Hartwig

Todd Davis