

Niagara Escarpment Hearing Office
Bureau des audiences sur
l'escarpement du Niagara



ISSUE DATE: February 23, 2021

CASE NO.:

20-034

PROCEEDING COMMENCED UNDER subsections 25(5.1) and 25(8) of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2

Appellant:	Nancy Griffith
Applicant:	Daniel Capaz
Respondent:	Niagara Escarpment Commission
Subject of appeal:	Approval of a Development Permit Application to construct a single dwelling, carport, driveway, grading, septic and well on a vacant lot
Reference No.:	P/R/2019-2020/329
Property Address/Description:	Lot 8, Plan 905, 9 Glenn Court
Municipality:	Town of Caledon
Upper Tier:	Region of Peel
NEHO Case No.:	20-034
NEHO Case Name:	Griffith v. Ontario (Niagara Escarpment Commission)

APPEARANCES:

Parties

Representative

Daniel Capaz

Matthew Fratarcangeli

Nancy Griffith

Self-represented

Niagara Escarpment Commission

Brandon Henderson

HEARD:

January 19, 2021 by telephone conference call

ADJUDICATOR(S):

Laurie Bruce, Hearing Officer

REPORT

REASONS

Background

[1] Daniel Capaz (the “Applicant”) submitted a development permit application to the Niagara Escarpment Commission (“NEC”) for a two-storey single dwelling. The undeveloped lot is municipally known as 9 Glenn Court and is located in the Town of Caledon in the Regional Municipality of Peel (“subject property”). The subject property is part of a rural plan of subdivision that pre-dates the Niagara Escarpment Plan (the “Plan”).

[2] The subject property is located within an Escarpment Protection Area.

[3] The Applicant’s original application was for a two-storey 723 square metres (“sq. m”) single dwelling with an attached garage. Following the January 13, 2020 submission of the application, on April 7, 2020, the applicant advised the NEC that the dwelling would be reduced in size. The revised proposal is for a two-storey 543 sq. m single dwelling with an attached garage. The original and revised proposal also includes the construction of a 30 sq. m detached carport, a well, and a private sewage treatment system.

[4] Due to an administrative error, the NEC reviewed and approved, with conditions, the original site plan for the larger dwelling (i.e. 723 sq. m) despite the revised site plan. The October 15, 2020 Notice of Decision referenced approval of the 723 sq. m single dwelling.

Appeals

[5] Appeals were received from neighbours Nancy Griffith and John Martyniuk under s. 25(8) of the *Niagara Escarpment Planning and Development Act* (“NEPDA”). Both

appellants were originally concerned with the size of the single-family home as referenced in the NEC's Notice of Decision. Upon hearing that the size of the house had been reduced, Mr. Martyniuk withdrew his appeal.

[6] On the January 19, 2021 telephone conference call ("TCC"), Ms. Griffith stated she was concerned that there was an existing approval for the larger dwelling since she had not been given any notice that this approval had changed.

[7] Ms. Griffith was advised by Mr. Fratarcangeli that the intent was to build the smaller dwelling, despite the NEC's issuance of a conditional approval for a larger dwelling.

[8] The Hearing Officer confirmed that although the intent was for the smaller dwelling, that approval was in place for the larger (723 sq. m.) dwelling.

[9] Following discussions on the TCC, the parties agreed that changes to the development permit conditions which would limit the size of the proposed dwelling would be an acceptable approach that would allow Ms. Griffith to withdraw her appeal.

Relevant Legislation and Rules

[10] The relevant legislation and rules of the Environmental Review Tribunal's *Rules of Practice* ("Rules"), which apply to appeals under the *NEPDA* in this situation, are:

NEPDA

25(12.1) The decision of the delegate shall be deemed to be confirmed if,

- (a) the decision of the delegate was a decision to issue a development permit;
- (b) the parties who appeared at the hearing have agreed on all the terms and conditions that should be included in the development permit and all of these terms and conditions are set out in the report of the officer under subsection (11); and

- (c) the opinion of the officer expressed in his or her report under subsection (11) is that, if the decision of the delegate included the terms and conditions referred to in clause (b), the decision would be correct and should not be changed.

Same

(12.2) If subsection (12.1) applies, the decision of the delegate shall be deemed to be a decision to issue the development permit with the terms and conditions referred to in clause (12.1) (b).

Rules

206. Where the Parties agree to all the terms and conditions that should be included in a revised development permit, the Tribunal may confirm the decision of the Niagara Escarpment Commission pursuant to section 25(12.1) of the Niagara Escarpment Planning and Development Act and shall include the terms and conditions in its report.

[11] In order to correct the error and ensure that the Development Permit is for the correctly sized dwelling, the Hearing Officer advised the parties that on consent, a report confirming the Commission's decision with the new terms (i.e. the size of the dwelling) would be needed. All parties agreed that modified conditions incorporating the revised site plan dated October 17, 2020 would be appropriate.

Evidence and Findings

[12] The Hearing Officer heard submissions of the parties. Brandon Henderson, the NEC planner, stated that the staff report supported the larger dwelling and that a smaller dwelling on the same footprint would continue to be appropriate subject to the conditions listed in the conditional approval.

[13] The proposed dwelling is a permitted use and satisfies the development criteria set out in Parts 2.2 (General), Part 2.7 (Natural Heritage), 2.8 (Agriculture) and 2.13 (Scenic Resources). The smaller dwelling remains in conformity with the Local and Regional Official Plans and is consistent with the Provincial Policy Statement. Therefore, the Hearing Officer accepts that if the Conditional Approval is amended as

proposed by the parties, with a modification to Condition 1 which explicitly references the October 17, 2020 site plan, the decision would be correct and should not be changed.

DECISION

[14] The NEC's decision to conditionally approve the Applicant's development permit application P/R/2019-2020/329, with the modification of Condition 1 to reference the Site Plan dated October 17, 2020 as set out in Appendix 1, is confirmed pursuant to s. 25(12.1) of the *Niagara Escarpment Planning and Development Act*.

*NEC Decision Confirmed with Revised Condition
Appeal Dismissed*

"Laurie Bruce"

LAURIE BRUCE
HEARING OFFICER

Appendix 1 – Development Approval with Revised Condition

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

**Niagara Escarpment Hearing Office
Environmental Review Tribunal**

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

CONDITIONS OF APPROVAL**P/R/2019-2020/329****Revised**

1. Development shall occur in accordance with the Site Plan dated October 17, 2020, Development Permit Application and Conditions as approved.
2. The Development Permit shall expire three years from its date of issuance unless the development has been completed in accordance with the Development Permit.
3. The landowner shall advise the Niagara Escarpment Commission and the Bruce Trail Conservancy in writing of the start and the completion date of the development. This notice shall be provided to the NEC 48 hours prior to the commencement of development, and within 14 days upon completion.
4. No site alteration of the existing contours of the property with the exception of the re-location of the berm including the placement or stockpiling of fill on the property is permitted with the exception of that identified within the development envelope in accordance with the approved Site Plan.
5. No vegetation shall be cut or removed from the development envelope except for that identified within the development envelope in accordance with the approved Site Plan.
6. All disturbed areas shall be re-vegetated and stabilized, in accordance with the approved Site Plan, by the end of the growing season following the completion of site grading and construction. All trees, shrubs and nursery stock shall be native to Ontario. Only in extenuating circumstances will non-native species be considered. Native plant material should be sourced from local plant nurseries when available; bush dug plant material is not acceptable. Monitoring of restoration and landscape plantings should occur for two years post-construction to ensure that planted material survives. Replacement plantings shall occur as necessary and invasive species removed.
7. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, an accurate and detailed Final Site Plan shall be submitted to the Niagara Escarpment Commission for approval. The Plan shall include but not be limited to the following:
 - a) All drawings submitted must be drawn to scale (bar scale shown), reference the application number and address of the proposal, be dated (revisions as well) and denote the relevant consultant;
 - b) An accurate delineation of the approved development envelope with temporary fencing;
 - c) The accurate location of all structures, sewage disposal system and driveway within the development envelope showing setbacks from the property lines, watercourse, top/bottom of slope, wooded areas, etc.;
 - d) Extent of all disturbed areas;

Condition 7 Continued:

- e) Extent and amount of fill removal or placement. Grading and drainage design including the areas of excavation and temporary or permanent fill placement. The type, quantity, quality and source location of any imported fill material must be accurately identified. Any fill material approved for importation under this Permit shall conform to the definition of "inert fill" per Ontario Regulation 347 and Table 1 of the Soil, Groundwater and Sediment Standards for use per Part XV.1 of the Environmental Protection Act, dated March 9, 2004;
- f) Erosion and sediment control measures;
- g) Surveyed location and inventory of vegetation to be preserved and removed as well as all protection measures.
- h) Final building design to be consistent with the information and drawings provided with the application and any modifications required by the Niagara Escarpment Commission. This would include, but not be limited to height to the peak of roof, area/square meters, architectural treatment, lighting and fenestration.

The approved Final Site Plan shall form the Site Plan referred to in Condition #1 and development shall proceed in accordance with the details of the approved Final Site Plan.

- 8. **Prior to the issuance of a development permit**, the applicant shall submit to the Niagara Escarpment Commission, a **final Grading and Drainage Plan** showing existing and proposed grading and drainage.
- 9. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, the applicant shall submit for the approval of the Niagara Escarpment Commission, **final construction details** for the dwelling and the accessory building, including exterior elevations, floor area, height above existing and proposed grades and the number of stories. Upon approval, these plans will be stamped "NEC Approved" and shall form part of the Development Permit referred to in Condition #1
- 10. The dwelling shall not contain more than one dwelling unit.
- 11. The accessory building shall be used for the purposes of a [i.e., detached garage/storage/drive shed/workshop] only and shall not be used for human habitation (i.e., living space), as a dwelling or apartment unit, or for commercial, institutional, home business, industrial or livestock purposes.
- 12. This conditional approval expires one (1) year from the date of confirmation of the decision to approve the Development Permit application. Conditions# 7, 8, and 9 of this conditional approval shall be fulfilled before the expiry date.

Advisory Notes

- a) This Conditional Approval does not limit the need for or the requirements of any other applicable approval, licence or certificate under any statute (e.g., Ontario Building Code, Conservation Authorities Act, Endangered Species Act, etc.). The Niagara Escarpment Commission Development Permit is required prior to the issuance of any other applicable approval, licence or certificate.
- b) The Niagara Escarpment Commission supports the protection of the night sky from excessive lighting and recommends that the applicant obtain information on shielding the night sky through the use and operation of appropriate lighting fixtures. This information is available at www.darksky.org.