

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



ISSUE DATE: May 17, 2021

CASE NO.: 20-045

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, as amended

Appellant: See Appendix 1 - Appellant List
Applicant: Frank Medeiros
Respondent: Niagara Escarpment Commission
Subject of appeal: Approval of a Development Permit Application to construct a one and a half storey accessory building on a lot with an existing single-dwelling
Reference No.: S/R/2020-2021/307
Property: Part Lot 37, Concession 12
Address/Description: 795385 Collingwood-Clearview Townline
Municipality: Township of Clearview
Upper Tier: County of Simcoe
NEHO Case No.: 20-045
NEHO Case Name: Close v. Ontario (Niagara Escarpment Commission)

APPEARANCES:

Parties

Counsel*/Representative

Frank Medeiros	Mina Youssef†
David Close	Self-represented
Steve Sam Cohen	Self-represented
Mary Ruby	Self-represented
Niagara Escarpment Commission	Judy Rhodes-Munk and Natalia Gerrard

HEARD: April 28, 2021 by telephone conference call
ADJUDICATOR(S): Laurie Bruce, Hearing Officer

REPORT

[1] The matter before the Niagara Escarpment Hearing Office (“NEHO”) is the appeal of a Development Permit issued to Frank Medeiros for the construction of a garage on his 4.26 hectare (“ha”) property. The Niagara Escarpment Commission (“Commission”) conditionally approved his Development Permit application.

[2] The subject property is designated Escarpment Protection Area and Escarpment Rural Area in the Niagara Escarpment Plan.

[3] Five appeals of the Development Permit were received from the following Appellants:

- a. David Close
- b. Susan de Souza-Close
- c. Steve Sam Cohen
- d. Wood Hill
- e. Mary Ruby

[4] The Applicant’s original application was for a one and a half storey four-car garage with an elevated storage area. Subsequent to the conditional approval by the Commission, Mr. Medeiros and his consultant, Babek Naghash, re-designed and re-located the proposed garage. The re-designed garage includes recreation facilities including toilet, sink and shower fixtures that will require water and sewage servicing.

[5] Three Pre-hearing Conferences (“PHCs”) were held by telephone conference call (“TCC”) during which the parties Mr. Close, Mr. Cohen and Ms. Ruby discussed issues of concern. Following the third PHC, the Appellants that had attended the PHCs agreed to withdraw their appeals.

[6] The issues before the NEHO were as follows:

- a. The visual impact of the garage relative to the main house
- b. The use of vegetation to provide a visual screen of the garage
- c. The use of the garage as a dwelling
- d. The need for additional septic capacity

Visual Considerations

[7] The parties expressed concerns about the height of the garage relative to the house and the separation between the buildings so that the proposed development would not create a wall of buildings. In response, Mr. Naghash prepared a drawing that was provided to the parties that depicted the relationship between the garage and the dwelling. The parties were satisfied that the two buildings would have an appropriate relationship and would not create a wall of buildings.

[8] Mr. Medeiros committed to vegetative plantings on the property in the vicinity of the new garage. The Appellants wished to see a requirement added to the Conditions of Approval for vegetative plantings to screen the garage. Judy Rhodes-Munk, planner with the Commission, provided draft wording which would require a landscape plan to be included with the site plan. The parties were satisfied that this condition will also mitigate any visual impact of the new development.

Restrictions on the Use of the Garage

[9] The Commission stated that a second dwelling is not permitted on this property and that it would be appropriate to require a restriction registered on title stating that the garage cannot be used as a second dwelling. Ms. Rhodes-Munk provided the NEHO and the parties with wording that the Commission typically uses when including this

condition. The parties were satisfied that this condition would appropriately restrict the use of the garage.

Need for Additional Septic Capacity

[10] With the modification of the garage, there is a wastewater management requirement. Mr. Medeiros retained the services of a septic specialist who prepared plans for a new septic system which would manage the wastewater solely from the garage. Ms. Rhodes-Munk had no concerns with the location of the septic tank and bed.

[11] The parties agreed that changes to the development permit conditions would allow Mr. Close, Mr. Cohen and Ms. Ruby to withdraw their appeals.

Relevant Legislation and Rules

[12] The relevant legislation and rules of the Environmental Review Tribunal's *Rules of Practice and Practice Directions* ("Rules"), which apply to appeals under the *Niagara Escarpment Planning and Development Act* ("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.

[13] All parties agreed that modified conditions addressing the restriction on the use of the garage as a dwelling and a requirement to include a landscape plan would address their outstanding concerns. The NEHO found that with these additional conditions, the decision of the Commission would be correct and should not be changed.

Evidence and Findings

[14] The Hearing Officer heard submissions of the parties. Ms. Rhodes-Munk's opinion is that the modified garage and the new septic would continue to be appropriate, subject to the conditions listed in the conditional approval.

[15] The proposed garage 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 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 set out in Attachment 2 the decision would be correct and should not be changed.

DECISION

[16] The NEC's decision to conditionally approve the Applicant's development permit application S/R/2020-2021/307, with the addition of Condition 9 and the modification of Condition 11 as set out in Appendix 2, 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

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

APPENDIX 1

Appellant List

Appellant Name	File No.
David Close	20-045
Susan de Souza-Close	20-046
Steve Sam Cohen	20-047
Wood Hill	20-048
Mary Ruby	20-049

CONDITIONS OF APPROVAL

1. Development shall occur in accordance with the Site Plan, Development Permit 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 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 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 first growing season following the completion of site grading and building 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.
7. **Prior to the commencement of any development**, appropriate erosion/sediment control measures shall be implemented and maintained as shown on the approved Site Plan (Condition #1) until all disturbed areas are stabilized. The landowner shall confirm the installation of the erosion/sediment control measures through the submission of photographs to the Niagara Escarpment Commission. It is the responsibility of the landowner to implement, monitor and maintain all erosion/sedimentation control structures until vegetative cover has been successfully established. Any deficiencies shall be addressed immediately.
8. The accessory building shall be used for the purposes of a detached garage/storage building 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.

CONDITIONS OF APPROVAL

New

9. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, the Landowner shall enter into an Agreement under Section

24(2.1) of the *Niagara Escarpment Planning and Development Act*, in a form acceptable to the Niagara Escarpment Commission. The agreement shall be registered on title of 795385 Collinwood/Clearview Townline; Concession 12, South Part Lot 37; Assessment Roll Number 432901001208801, at the Landowner's expense, to state: **Only one dwelling is permitted on the lot. The accessory building (detached garage) shall not be used as a second dwelling.** The Landowner shall provide proof satisfactory to the Niagara Escarpment Commission that the agreement has been registered against the lands [i.e., copy of the parcel registry extract and a letter from the Landowner's solicitor that the registration is complete], and that the Landowner under this Development Permit is the Landowner of the lands at the time of registration.

10. Construction/site alteration shall not occur between April 1 and August 31, inclusive, of any given year, within the breeding season of the species at risk

Updated

11. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, a **Final Landscape/Grading/Site Plan** shall be submitted for Niagara Escarpment Commission approval. This Plan shall include the final location of all buildings and facilities, shall identify the areas of vegetation/tree retention and the areas of new tree planting designed to buffer the visual impact of all new development, and shall indicate locations and types of exterior landscape lighting. The approved Final Landscape/Site Plan shall form part of the Development Permit Application referred to in Condition # 1 and development shall proceed in accordance with the details of the approved Final Site Plan.
12. This conditional approval expires one (1) year from the date of confirmation of the decision to approve the Development Permit application. Conditions # 10 of this conditional approval shall be fulfilled before the expiry date.

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.

CONDITIONS OF APPROVAL

- b) The Niagara Escarpment Commission supports the protection of the night sky from excessive residential 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.