

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** May 31, 2023

**CASE NO(S).:**

OLT-22-004183

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act, R.S.O. 1990, c. P. 13, as amended*.

Applicant/Appellant	Collin James
Subject:	Application to amend the Zoning By-law – Refusal of application
Description:	To permit the retail sale and storage of docks on the subject property.
Reference Number:	By-Law 2001-06
Property Address:	154, 156 North Sparks Street
Municipality/UT:	Magnetawan/Parry Sound
OLT Case No:	OLT-22-004183
OLT Lead Case No:	OLT-22-004183
OLT Case Name:	James v. Magnetawan (Municipality)

**Heard:** January 19, 2023 by video hearing

**APPEARANCES:**

**Parties**

**Counsel/Representative**

Collin James

John Ewart

Municipality of Magnetawan

Edward Veldboom

**DECISION DELIVERED BY S. MANN AND ORDER OF THE TRIBUNAL**

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[Link to Final Order](#)

## INTRODUCTION

[1] This is a Hearing concerning an appeal by Collin James in regards to 154 and 156 North Sparks Street (the “subject properties”). The Appellant is seeking a Zoning By-law Amendment to rezone the subject properties from Village Commercial (CV) Zone to the Village Commercial Exception Three (CV-3) Zone (“Application”). The purpose of the rezoning is to permit retail sales and storage of docks, accessory to an existing commercial use located at 4220 Highway 520 (“primary property”).

[2] The subject properties are comprised of approximately 0.7 acres (“ac”) and have 62.7 metres (“m”) of road frontage along Sparks Street. 154 North Sparks Street is developed with a building approximately 4.8 m by 7.3 m and contains a septic system in the southwest; a parking lot and the existing building is currently used as storage. 156 North Sparks Street is currently vacant and contains a septic system to the rear of the property.

[3] The subject properties were previously developed as a general store and inn, which burned in a fire. Since then, no buildings have been constructed.

[4] The subject properties are located within the Community Boundary of the Village of Magnetawan and is subject to Zoning By-Law 2001-26 (“ZBL”) and is zoned Village Commercial.

[5] The surrounding properties are all within the same Community Boundary. The lands to the south of the surrounding properties and to the north of Burrows Street and Highway 520 are also zoned Village Commercial. The lands on the east side of North Sparks Street and Bay Street are zoned Village Residential. As a result, the surrounding area is developed with a mix of residential and commercial uses.

[6] The intersection of North Spark Street and Highway 520, located in close proximity to the subject properties, is a principal intersection of the Municipality.

## **APPLICATION**

[7] The proposed ZBA would accomplish the following:

- a. Provide for an exception to the CV Zone to permit retail sales and storage of docks, accessory to an existing commercial use located at 4220 Highway 520.
- b. Provide specific regulations for the development of the lands within this zone including:
  - i. Minimum setback (along North Sparks Street) shall be 6 m and be established with landscaping, excluding parking areas and driveways;
  - ii. Minimum setback (along Bay Street) shall be 6 m, excluding landscaping features, parking areas and driveways;
  - iii. Minimum setback (along the west lot line, opposite Sparks Street) shall be 3 m and be maintained as a vegetated buffer;
  - iv. Minimum setback (along the south lot line, opposite Bay Street) shall be 3 m, existing vegetation is to remain and excluding parking areas and driveways.

[8] The effect of the ZBA would permit the sale and storage of docks at the subject properties. The Appellant has, prior to approval of its Application, used the subject properties as storage for its docks, while continuing their sale at the primary property, a use not currently permitted at the subject properties.

[9] Understanding concerns regarding compatibility of the neighbourhood and the importance of the location of the subject properties to the village area, the Appellant also proposes to install a 36 m tall lighthouse feature and reconstruct the existing building.

[10] On June 15, 2022, the Municipality of Magnetawan (“Municipality”) Council convened and, based on the opinion of planning consultants for the Municipality, denied the Application due to the ZBA not conforming to the Official Plan for the Municipality of Magnetawan (“OP”).

[11] On July 5, 2022, the Appellant filed an appeal to the Ontario Land Tribunal stating that the proposed ZBA is consistent with the Provincial Policy Statement, 2020 (“PPS”), conforms with the Growth Plan for Northern Ontario (“GP”), conforms with the OP and represents good planning and is an appropriate development of the subject properties.

## **LEGISLATIVE TESTS**

[12] In making a decision on the ZBA before it, the Tribunal must be satisfied that it is consistent with the PPS and conforms to the OP. In addition, the Tribunal must have regard to matters of provincial interest in s.2 of the *Planning Act* (“Act”) and be satisfied that the proposed ZBA represents good planning and is in the public interest.

## HEARING

[13] The Tribunal received and marked the following documents as exhibits:

- Exhibit 1: Appellant Document Book
- Exhibit 2: Document Book of Jamie Robinson
- Exhibit 3 CV of Jamie Robinson

[14] The Appellant called Melissa Markham as its witness and the Municipality called Jamie Robinson, both professional planners in the Province of Ontario. Ms. Markham and Mr. Robinson were qualified by the Tribunal to provide opinion evidence in land use planning.

[15] Ms. Markham presented evidence on behalf of the Appellant, providing the opinion that the Application is in the public interest and represents good planning. She opined that site plan control could be utilized to mitigate concerns by implementing landscape features and buffers, set out area where the docks could be stored on the subject property, and also regulate the time that the docks could be stored at the subject property. She further opined that the proposed development is in character with the surrounding uses and would not result in traffic, noise or environmental concerns. Ms. Markham was of the opinion that the development would provide employment use, thereby supporting the future business of the community, that such small-scale commercial use is in fact encouraged to be located in the community. Ms. Markham concluded stating that the Application is consistent with the PPS and conforms to the OP while maintaining the spirit and intent of the *Planning Act* ("Act").

[16] Ms. Markham believes that the proposed ZBA, which provides accessory use at the Subject Property, could be permitted by tying such use to the primary property's operation and the use of a development agreement would aid in implementation.

[17] Mr. Robinson, on behalf of the Municipality, was of the opinion that the proposed ZBA to permit outdoor storage use is not characteristically a use appropriate for the location of the Subject Property. He opines that the character of the area is in fact a central area, detailing the streetscape. As a result, Mr. Robinson concluded that the Application is not consistent with the PPS, specifically regarding policies regarding long term prosperity by maintaining viability of downtown streets and that the proposed development does not conform with the OP.

[18] The Municipality further argued that the proposed ZBA is a poorly written by-law that would be impossible to implement or enforce, a large part due to the Appellant's proposal of relying on site plan control to regulate matters of concern, preventing both the Municipality or Tribunal from reviewing terms before a decision is made in regards to the ZBA.

## **ANALYSIS AND CONCLUSION**

### **Provincial Policy Statement**

[19] Ms. Markham contends that the ZBA is consistent with the PPS as the subject property is within the Municipality settlement area, the proposed development provides a commercial use with no environmental or public health and safety concerns, as well as it aids the Province in the provision of employment opportunities. Ms. Markham indicated that the Municipality has planned for employment lands development in the area and that the proposed development is desirable as it would expand an existing

business within the area. Regarding public spaces, recreation, parks, trails and open spaces, the proposed development includes landscaping components that would aid in community connectivity at the main intersection of the surrounding area.

[20] Although the Appellant has demonstrated that aspects of the proposed development are consistent with the PPS, Mr. Robinson provided evidence to the contrary. Although the PPS does provide direction to focus growth and development within settlement areas and the development of employment lands is desirable, the PPS indicates that long term prosperity is to be supported by enhancing the vitality and viability of the downtown. It is the opinion of Mr. Robinson that the proposed development of a dock storage yard in no way enhances the vitality and viability of downtowns and main streets. Photographic evidence was used to demonstrate that the historic use of the subject property as a general store and inn, in comparison to the current use as dock storage, is a more desirable land use. The ZBA proposes use of landscape buffers to mitigate the view of the business to operate on the subject property, which in the opinion of Mr. Robinson does not aid in the sense of place of the surrounding area. The two structures proposed to be erected are a lighthouse and the reconstructed house, that had previously burned down, for use as a sales office.

[21] Although the proposed development is a permitted use under the PPS, there are concerns regarding the impact of development on the downtown and more specifically main street.

### **Growth Plan – Northern Ontario**

[22] Both parties agree that the ZBA does not conflict with the GP.

## **Official Plan for the Municipality of Magnetawan**

[23] The subject property is located within the Community Boundary of the Village of Magnetawan as identified in the OP. The OP states that council wishes to encourage new industrial and commercial development that is compatible with environmental conditions and surrounding land uses, as such uses have not increased significantly in recent years. The key concern regarding the OP in this matter is compatibility.

[24] It is Ms. Markham's opinion that compatibility concerns are adequately addressed through the proposed measures of buffers, site plan control, including operational procedures. Ms. Markham opined that the proposed retail use and storage of docks support both the community and adjacent surrounding seasonal and rural uses.

[25] The OP states that mix of uses are encouraged in communities and further states that in considering applications to permit new uses, Council shall be satisfied that the proposed use: (i) is compatible with surrounding land uses; will not result in traffic or noise problems; and will not adversely affect adjacent private sewage or water systems. Ms. Markham provided the opinion that the ZBA was proposed with compatibility in mind as the subject property is located near a trailhead and the proposed landscaping will mitigate visual impacts and improve connection with the trail and will not cause adverse impact in regards to traffic, noise or water systems and sewage. Further, the OP speaks to encourages small-scale commercial uses that service the immediate community and the tourism industry. In recognizing the concerns of the Municipality, the Appellant argues that site plan control measures being applied to the development, as is required by the OP in relation to commercial and industrial development, can be used to resolve any further concerns of the Municipality.



[26] Another concern regarding the ZBA is due to the proposed use being an accessory use. Ms. Markham indicated to the Tribunal that the OP includes interpretation of accessory uses so that where a use is permitted, accessory uses essential to the use shall also be permitted. The Appellant argues that the accessory use is to an existing business in the same area at the primary property, which currently operates in conformity to the OP.

[27] Contrary to the opinion of Ms. Markham, Mr. Robinson opines that the proposed development is out of character with uses proximate to the subject property and does not conform to the OP, arguing that consideration must be given to the opening statement of the OP as it sets out objectives.

### **Zoning By-Law 2001-26**

[28] The Appellant proposed to provide for an exception to the CV Zone in order to permit the proposed use of retail sales and storage of docks, arguing that such use is similar to uses permitted on the subject properties and is in keeping with the ZBL.

[29] The Municipality raised concerns regarding the proposed ZBA as multiple issues cause concern on whether the proposed use is permitted. A key concern identified during the hearing was that the proposed use would be considered an accessory use. According to the ZBL, accessory use is to occur on the same lot as the main use. Further, if an accessory use was permitted at the subject properties, the ZBL requires a main building on the property, with the accessory building behind it. Such accessory use would not be permitted to cover more than 15% of the lot area and there would be a requirement to screen storage. Mr. Robinson opined that sufficient screening does not exist at the subject properties, the proposed ZBA plans do not address requirements for

accessory use sufficiently as the lot area covered would exceed the 15% requirement and there would be no primary use at the subject properties.

[30] It would appear that a more appropriate application for the Appellant for the use desired would most similarly fit within an M1 Zone, which does permit open storage, however the subject properties' CV Zone proposed rezoning does not.

[31] The Appellant's argument of use of site plan control to restrict accessory use on the subject properties in connection with the primary property has not been demonstrated to be an effective solution to the concerns raised by the Municipality.

## **Conclusion**

[32] Based on the evidence provided, the Tribunal favours the opinion of Mr. Robinson, on behalf of the Municipality, and find that the proposed ZBA does not meet the legislative tests and as a result the Appeal is to be dismissed.

**ORDER**

[33] **THE TRIBUNAL ORDERS** the appeal is dismissed and the requested amendments to By-law 2001-26 of the Municipality of Magnetawan is refused.

*“S. Mann”*

S. MANN  
MEMBER

**Ontario Land Tribunal**

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