



# The Mining and Lands Commissioner

## In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C. ) Friday, the 26th  
Mining and Lands Commissioner ) of May, 1989.

AND IN THE MATTER OF

An appeal against the refusal to grant permission to construct a second-storey addition to a cottage on part of Lot 38, in Concession II in the Township of South Gower in the United Counties of Leeds and Grenville.

B E T W E E N :

LINDA SAUNDERS

Appellant

- and -

THE RIDEAU VALLEY CONSERVATION  
AUTHORITY

Respondent

J. Fogarty, for the appellant.  
H. Brodmann, for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to construct a second-storey addition to a cottage on part of Lot 38 in Concession II in the Township of South Gower in the United Counties of Leeds and Grenville. By Ontario Regulation 364/82 the power and duty of hearing and determining such appeals were assigned to the Mining and Lands Commissioner. The appeal was heard in Ottawa on the 23rd day of November, 1988.

The subject lands compose a parcel lying between the easterly bank of the Ottawa River and County Road No. 19. There is a frontage of fifty-five feet on County Road No. 19 and the side boundaries of the property appear to be parallel. There is presently situate on the subject lands a one-storey cottage erected on a new foundation.

The foundation was recently placed under the existing cottage by the lifting of the cottage from its existing foundation, the construction of a new foundation made of preserved plywood and other preserved woods and replacing the existing cottage on the new foundation. The installation of this

foundation was done with the permission of the respondent.

The applicant also requested approval to construct a second storey to the one-storey cottage measuring twenty-five feet and eight inches in width and twenty feet and eight inches in length. The one-storey cottage contains two bedrooms, a living area, a kitchen and bathroom facilities. The proposal was to create a slightly larger second storey by cantilevering the floors so that there would be an extension of one foot on two sides of the proposed second storey and an extension of three feet on the westerly or river side of the second storey. The purpose of the three-foot extension was to permit the construction of a cathedral type living room at the front of the main floor of the cottage. The proposal includes the construction of two bedrooms at the rear of the second floor and the discontinuation of the use of the bedrooms on the first floor.

There was some doubt as to whether the cottage was presently used for seasonal use but on the evidence the tribunal is satisfied that, following the construction of the basement approved by the respondent, the use of the existing building has become permanent.

At the outset counsel for the appellant took a preliminary position that the appeal should be dismissed on the grounds that the application, although made by the applicant, did not fall within the jurisdiction of the respondent. It was argued that the construction of the second storey in the particular case constituted a repair or renovation of an existing building and did not constitute a "construction of any building or any structure". A number of authorities were presented to the tribunal in respect of other legislation. In the opinion of the tribunal the argument is one which would be more appropriately submitted to a provincial court judge on a prosecution or to the Divisional Court on an application for judicial review of the decision of the respondent. Suffice it to say that this tribunal

has some difficulty in concluding that the construction of a second storey which more than doubles the floor space of the existing building could fall within the concept of repair or renovation.

Turning to the merits of the application, the elevation of the regional flood, based on the one in one hundred year flood, which standard is applicable in the area, is 287.4 feet. Although the evidence is not precise as to the existing elevation of the grade at the site of the existing building, particularly after the installation of the new basement, it appears that in a regional storm there would be approximately three to four feet of flooding. The evidence indicates that there was serious flooding in the storm of March 29, 1976, which has been determined to be a one in twenty-five year storm, a storm of less seriousness than a regional storm. In addition there was some flooding on the property in the storm of March 15, 1977, a storm estimated to be a one in five year storm.

The flood plain mapping, Exhibit 3, shows that County Road No. 19 at the rear of the subject lands and the land for a considerable distance easterly thereof is in the regional flood plain. Accordingly it would seem to be impossible to provide access to or from the subject lands in the event of a regional storm and presumably for this reason the respondent did not impose the usual condition of the permission in respect of the basement. While the impossibility may be overlooked in the improvement of the existing situation by moving the first floor above the elevation of the regional flood and strengthening the support of the building, such an approach does not necessarily follow in adding a second storey to the building.

The evidence indicated that although the subject lands are situate in an area in which there is a significant number of modest full time residences, there remains a number of sites in

respect of which applications could be made for development and the issue of precedent cannot be disregarded.

In the opinion of the tribunal the application must be viewed as a request for new residential construction in the floodway at a site which is subject to four feet of flooding in a regional storm and which is incapable of having access provided by reason of the elevation of County Road No. 19 and the lands lying to the east. While the risks may be said not to be numerically increased in respect of persons, such a position is not necessarily the case in the future and the risk to property is increased with the increase in investment. The access problems illustrate the risk not only to occupants but to public officers and private persons providing services to the occupants in flood conditions.

The tribunal is satisfied that the decision of the respondent is in accordance with its policies, express or implied, and that the applicant has not been denied permission in circumstances in which other applicants have been granted permission. No provincial policy permitting construction of residential premises in a floodway subject to four feet of flooding in a regional storm has been drawn to the attention of the tribunal and it can only be concluded that there is no overriding federal, provincial or municipal concern to justify allowing the appeal.

1. THIS TRIBUNAL ORDERS that the appeal is dismissed.
2. THIS TRIBUNAL ORDERS that no costs shall be payable by either party to the matter.

SIGNED this 26th day of May, 1989.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.