



The Mining and Lands Commissioner

In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C.) Thursday, the 20th day of
Mining and Lands Commissioner) November, 1986.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct a small addition to an existing structure on the premises municipally known as 63 Main Street South in the Village of Grand Valley in the County of Dufferin.

B E T W E E N :

GRACE SELLMER
- and -
Appellant
GRAND RIVER CONSERVATION
AUTHORITY
Respondent

R.J. Sellmer, agent for the appellant.
J.M. Harris, Q.C., for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to issue permission to construct an addition to an existing residence on Lot 3 and part of Lot 4 on Main Street in the Village of Grand Valley. 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 Toronto on November 13, 1986.

The Grand River flows in a southwesterly direction in the area in question and Main Street in the Village of Grand Valley is laid out in a north-south direction crossing the river at an angle of approximately forty-five degrees. The subject lands are the fourth property northerly from the intersection of the east side of the street and the north side of the river. There is a frontage of ninety-nine feet on Main Street and the north limit measures approximately 208.5 feet. The south limit measures approximately 132 feet.

A two-storey brick house measuring nineteen feet by thirty-two feet is situate on the subject lands. The house is estimated to be in excess of one hundred years in age. The first

floor consists of a living room, dining room and kitchen. Three bedrooms and a bathroom are situate on the second floor. At the rear or the easterly end of the house there is a frame shed in poor condition. The shed measures approximately fourteen feet by thirteen feet.

The proposal was to remove the shed and extend the existing building easterly a distance of eighteen feet. No architectural plans of the proposed addition were submitted in evidence and sketches produced at the hearing indicated that the proposed basement would be higher than the basement shown on the sketches presented with the application to the respondent. It was proposed to have a poured concrete basement raising the floor level three steps above the floor level in the existing house. It was estimated that this level would be four feet above grade. All services would be above the floor level.

The agent for and son of the appellant has lived on the site since 1971. He experienced floods in the years 1972 and 1982. His evidence was that in 1982 there had been two feet of water in the living room of the existing house. He also stated that the area between the house and the street has a higher elevation than the grade at the house and consequently the flooding on the occasion only proceeded two or three feet to the west of the house. However, photographic evidence produced by the respondent, while not specifically showing the subject property, indicated flooding of the street from the river to at least two properties north of the river.

The engineering evidence of the respondent indicated that the elevation of the subject lands is 1,487 feet above sea level. The measured elevation of the 1972 and 1973 floods caused by ice jams was 1,489.6 feet indicating that there would be 2.6 feet of flooding at the proposed site on these occasions. The evidence also indicated that there had been flood events created from causes other than ice jams on subsequent dates with levels approximately one foot below the levels created by the ice jams.

The engineering evidence further showed that the elevation of the one in one hundred year flood having a flow of

14,000 cubic feet per second is 1,490.5 feet which is 3.5 feet above the site. Also, the regional storm elevation, with a flow of 26,600 cubic feet per second would have an elevation of 1,494.2 feet, resulting in 7.2 feet of flood water at the site.

The policy of the respondent as indicated by the evidence is to administer a two-zone policy with the flood fringe being based on the maximum observed flooding elevation. As indicated above, the site is 2.6 feet below that elevation and is within what is commonly known as the floodway. The policy of the respondent as indicated by its manual filed as Exhibit 4 severely restricts construction in the floodways under the jurisdiction of the respondent. There is an absolute prohibition of permanent and mobile structures for human occupation and the exceptions relate to flood protection works, municipal works and temporary storage facilities for a limited class of products. The manual contains provisions for the construction of additions but the evidence of the enforcement officer for the respondent was that these policies are applied only in the flood fringe and hence were not applicable to the subject site. It was argued that even if applicable, such a proposal was excluded as the area of the proposed addition exceeded fifty per cent of the area of the existing house. The policy statement contains a principle that an addition which costs more than fifty per cent of the existing value of the structure or works should be treated as a new structure. The evidence indicates that the building was probably worth approximately \$40,000 and the cost of the addition would be in the nature of \$12,000 to \$14,000. However, as indicated by the evidence the significant consideration is that additions for residential purposes are permitted only in the fringe area by reason of the express exclusion of residential structures in the floodways.

The evidence indicated that the policy of the respondent was applied consistently with its manual. The sites in the floodway for which applications had been received were shown in red on Exhibit 5 and the applications were refused except where one property fell partly within the flood fringe. The agent for

the appellant referred to a property on the southerly side of the river. Permission had been granted for replacement of a rear portion of a building which had been damaged in the 1985 tornado. That special policy did not apply in respect of the proposed reconstruction in this case.

The tribunal is not aware of any conservation authority having a policy that permits the construction of residential premises on a site subject to seven and one-half feet of flooding in a regional storm. Where construction is permitted and as in this case would be limited to the flood fringe it is usually required that access in the event of a regional storm be provided and it is not apparent in the circumstances of this case that such access could be provided. The tribunal is satisfied that in its application of its policies the respondent has dealt with the applicant in the same manner as other applicants have been dealt with and the applicant has not been denied any policy that has been afforded to other applicants.

The respondent provided the applicant with four reasons for its refusal. Without repeating these reasons the tribunal is satisfied that the reasons are valid and can only conclude that the appeal should be dismissed.

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

SIGNED this 20th day of November, 1986.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.