

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: March 03, 2025

CASE NO(S): OLT-21-001611

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Douglas Wilson
Subject:	Minor Variance
Property Address/Description:	32 King Crescent
Variance from By-law:	2008-66P
Municipality:	Town of Huntsville
Municipal File No.:	A/38/2021/HTE
OLT Lead Case No.:	OLT-21-001611
OLT Case No.:	OLT-21-001611
OLT Case Name:	Wilson v. Huntsville (Town)

Heard: July 25 and 26, 2024 by Video Hearing

APPEARANCES:

Parties

Douglas Wilson

Town of Huntsville

Counsel

Russell D. Cheeseman
Stephanie Fleming

M. John Ewart

**DECISION DELIVERED BY SHARON L. DIONNE AND N. ALLAM AND ORDER OF
THE TRIBUNAL**

[Link to Final Order](#)

INTRODUCTION

[1] The matter before the Tribunal is an appeal by Douglas Wilson (“Applicant”) against a Decision of the Committee of Adjustment (“COA”) of the Town of Huntsville (“Town”) respecting Application A/38/2021/HTE (“Application”), pursuant to s. 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”). The Application affects the lands municipally known as 32 King Crescent, Huntsville (“Subject Property”).

[2] The Subject Property has a frontage of 41.5 metres (“m”) on the Muskoka River and an area of approximately 1,430 square metres. There is a single detached dwelling, a boathouse, dock, an older existing concrete wall along the river’s edge (“breakwater wall”), and a more recently constructed retaining wall (which is the subject of the Application) located on the Subject Property.

[3] At the time of the Application, the Subject Property is designated “Urban Shoreline Residential” under the Town of Huntsville Official Plan (“TOP”) and is zoned “Residential One (R1)” under the Town of Huntsville Comprehensive Zoning By-law No. 2008-66P, as amended, (“ZBL”).

[4] The purpose of the Application is to seek relief from the ZBL as follows:

- a) To provide relief from subsection 3.1.6 of the ZBL to permit an increase in the maximum accessory lot coverage from 5 percent (“%”) to 5.13% for a floating dock; and,
- b) To provide relief from subsection 3.1.18.2 of the ZBL to recognize a retaining wall within the Shoreline Buffer on the Property.

[5] The retaining wall, which is the subject of the requested variance, has already been constructed.

[6] On October 13, 2021, the COA denied the retaining wall variance and approved the dock-related variance subject to the following three conditions:

- i) Removal of the non-complying retaining wall;
- ii) Revegetation to establish a suitable shoreline buffer within 15 m of the Muskoka River shoreline; and,
- iii) Consultation with the Ministry of Environment, Conservation and Parks regarding applicable requirements of the Endangered Species Act respecting Butternut trees potentially impacted as a result of retaining wall construction.

[7] The COA Decision aligns with Town Staff's recommendations on the Application as set out in Report DEV-2021-116 as found in **Exhibit 4**, pages 4 – 18, inclusive.

[8] By way of background, a number of years have passed since the time of the filing of the appeal, and during that time the Parties have made attempts to resolve the issues between them in respect of the appeal but without success.

[9] In July 2024, the Tribunal held a two-day hearing *de novo* constituted by way of a two Member Panel, at which time the Panel heard evidence from a total of three expert witnesses: two land use Planners and one Civil Engineer.

[10] Based on the submissions made by the Parties and the opinion evidence proffered in the hearing, and in consideration of the applicable legislative tests, the Panel has arrived at its Decision to approve the requested relief from the provisions of the ZBL for the reasons set out below.

LEGISLATIVE TESTS

[11] The Tribunal, when considering an Application for Minor Variance, must be satisfied that the requested variance(s), as in its opinion, meets the four tests as set out in s. 45(1) of the Act, namely:

1. Is the general intent and purpose of the Official Plan maintained?
2. Is the general intent and purpose of the Zoning By-law maintained?
3. Is the requested variance desirable for the appropriate development or use of the land, building or structure? and
4. Is the requested variance minor in nature?

[12] The Tribunal in carrying out its responsibilities under the Act, must have regard to matters of provincial interest as set out in s. 2 of the Act.

[13] The Tribunal in making its Decision under the Act in relation to a planning matter, in this case the requests for variances to the Town's ZBL, must have regard to the Decision of the COA and the information and materials considered by it in accordance with s. 2.1(1) of the Act, however the Panel is not bound by that Decision.

[14] The Tribunal's Decision affecting a planning matter shall be consistent with the policy statements issued by the Province and must conform with provincial plans in effect at the time of the Decision in accordance with s. 3(5) of the Act. It is noted that some time has passed since the hearing concluded, and in that time the Province replaced Provincial Policy Statement 2020 ("PPS 2020") with the new Provincial Planning Statement, 2024 ("PPS 2024") which came into effect as of October 20, 2024. In this case, the Tribunal's Decision shall be consistent with the PPS 2024.

[15] The Parties have confirmed to the Tribunal in writing that the matter does not need to be reopened to hear additional evidence in respect of PPS 2024 on the basis of the expert opinion evidence provided in relation to PPS 2020. With respect to the case

before it, the Panel is satisfied that the Parties are correct and that the changes between the PPS 2020 and PPS 2024 would not materially affect the evaluation of the requested variances and accordingly the Panel's Decision.

EVIDENCE

[16] The Panel qualified the following expert witnesses to provide opinion evidence under oath in their respective disciplines:

For the Applicant:

- Graeme Huizinga – Land Use Planning
- Les Ranta, P.Eng. – Civil Engineering

For the Town:

- Richard Clark – Land Use Planning

[17] In addition, the following documentary evidence was received and entered as Exhibits:

Exhibit 1 – Document Book of Appellant - Huntsville Kings Crescent dated July 16, 2024

Exhibit 2 – Joint Document Book (with Tabs 1-18) of date July 16, 2024, received by Tribunal from the Appellant (July 24, 2024)

Exhibit 3 – Town of Huntsville Witness Statement of Richard Clark dated July 12, 2024

Exhibit 4 – Document Book of the Town of Huntsville (with Tabs 1-11) received by Tribunal on July 15, 2024

[18] It is noted that hyperlinks to the TOP and ZBL are found at **Exhibit 1**, Tab 1. The Subject Property is zoned "R1" and the area where the retaining wall has been constructed is considered both the Front Yard and a Shoreline Buffer.

[19] The requested variances would facilitate the floating dock and retaining wall as shown on the Sketch, prepared by Wayne Simpson & Associates Planning and Development Consultants dated August 9, 2021, found at **Exhibit 2**, Tab 15, PDF page 106, and of the latest revision date of June 27, 2023, found at **Exhibit 1**, Tab 5, PDF page 67, which is attached to this Decision (Attachment 1) and referred to herein as the “Site Plan”.

[20] The Site Plan shows the existing dwelling, the 15 m Shoreline Buffer limit (dashed line), the existing boathouse and dock, and the proposed floating dock, and the features and/or facilities within the Shoreline Buffer area which include the existing concrete wall which is labelled to be more or less coincident with the present High-Water Mark (“HWM”) of the river (this is the “breakwater wall”).

[21] It is noted that within the Shoreline Buffer area, there is the recently installed two-tier formed concrete retaining wall, which has the effect of creating a lower area close to the river, behind the breakwater wall, for pathway access to the boathouse and dock. There are two sets of stone steps: one which connects the pathway to the boathouse and dock, and one that leads to a gravel sitting area, which is raised up above, behind the boathouse.

[22] The retaining wall has an overall height of 3.1 m, with the lower wall being 1.7 m and the upper wall being 1.4 m in height.

[23] A Landscape Sketch (original date May 2022) with a Revision Date of June 14, 2022 is found at **Exhibit 1**, Tab 6, PDF page 69, and is referred to herein as the “Landscape Plan”. Thereon, proposed planting areas and the proposed specified plant species for revegetation of disturbed areas of the 15 m Shoreline Buffer are shown. The Landscape Plan is attached to this Decision (Attachment 2).

[24] The Panel notes that there are no objections from the neighbouring Property Owners as to the proposed floating dock and retaining wall, and the variances being sought.

[25] During the hearing, the Appellant sought to introduce a video prepared by ECOcottage films, which Counsel for the Appellant acknowledged was a third party source and unusual but was intended to assist the Panel in understanding context and the opposite side of the river, noting that what has occurred on other properties is not germane to the Application and the Panel's consideration in context of the four tests under s.45 of the Act. Counsel for the Town raised an objection to the film, alleging that it should be considered third party hearsay evidence. The Chair allowed approximately one minute of the video to be shown in order for the Panel to familiarize itself with the nature of the film. The Panel confirms in this Decision that it concurs with Counsel for the Town that the video is third party hearsay and not relevant to the matters before it. As such, the video has been given no weight and has not been factored into the Panel's evaluation of the requested variances.

[26] The opinion evidence proffered in the hearing, which is pertinent to the main issues, as summarized by the Panel, is set out below.

ANALYSIS AND FINDINGS

[27] The Tribunal is mandated to consider the evidence before it and to determine whether the legislative tests are met or not.

The Four Tests - Requested Variance for Retaining Wall

[28] As noted, the variance seeks relief from subsection 3.1.18.2 of the ZBL to recognize a retaining wall within the Shoreline Buffer on the Subject Property.

[29] By way of background, based on the opinion evidence of the two Planners and supported by way of the Town Planning Report (**Exhibit 4**, PDF pages 4 – 18), the request for the retaining wall variance is to legitimize a retaining wall intended to address issues with respect to river flooding and erosion of the slope located between the house and the shoreline on the Subject Property. In the hearing, it was submitted to the Panel that the contractor had consulted with Town Staff prior to initiating the works and, based on the information exchange, the Applicant was of the understanding that no approvals were required to be obtained to install a retaining wall. It is understood that following the installation of the retaining wall and prior to completion of the proposed landscaping works, the Town received a complaint, which resulted in a site investigation being undertaken by Town Staff, including the Town Planner.

[30] The documentary evidence in this case includes the Town's Zoning Violation letter dated June 17, 2021 (**Exhibit 2**, PDF page 100), which reads as follows:

“... property is zoned Residential One (R1) within the Town's Comprehensive Zoning By-law (Bylaw 2008-66P, as amended) ..., but fronts the Muskoka River. Under Section 3.1.9, retaining walls are permitted within any required zone; as such a Retaining Wall is permitted in the front yard setback on your property. However, general zoning provisions relating to Shoreline Structures and Shoreline Buffers apply to restrict the size of shoreline amenity areas and to require that all lands outside these areas be maintained in a natural state with soft landscaping only being permitted. According to the complaint received, and our subsequent site investigation, recent works on your property do not comply with these zoning requirements.”

[31] Additionally, the Town Planner communicated directly with the Applicant by way of email dated July 5, 2021 (**Exhibit 2**, PDF pages 96 – 98) and therein the retaining wall is referred to as “*hard landscaping*”. The email details information that “*zoning relief will be necessary to address these non-compliances through obtaining a approval of minor variance*” and, that in support of the Application, the Town would require a site plan, a re-vegetation plan showing native species in accordance with the Town's Shoreline Revegetation Policy to the maximum extent feasible (to bring the Shoreline Buffer closer into compliance with zoning provision 3.1.18.2 of the ZBL), and a tree assessment prepared by a qualified professional to assess the health of the trees in vicinity of the works and provide recommendations as may be necessary for mitigation.

[32] In response, the Applicant retained a Planner to submit the Application to address the issues, accompanied by the Site Plan and a tree evaluation report.

[33] The documentary evidence in this case also includes the tree evaluation report prepared by Phil Pavey, a Certified Arborist (**Exhibit 2**, Tab 12, PDF page 90). As noted therein, the objective of which was to assess the current condition of existing trees (including specifically a Butternut tree), the extent of the shoreline construction, and the amelioration of the site post construction. As set out therein, specifically in respect of the Butternut tree, it is noted that Mr. Pavey:

“have personally worked and maintained the Butternut tree over the past 20 years. There has been no sign a Butternut Canker over the years, and the tree has adapted to past site conditions with favourable growth results. There appears to be a small lesion that has been established for several years. It is not determined that this is Butternut Canker. ... There are a few Butternuts in the neighborhood, some of which, exhibit significant decline, and others have indeed died over the years. This tree has been doing well despite the pre-construction erosion of the side hill. However, soils were being lost due to erosion, and there was becoming less resistance for the trees support on the compression side of the tree. It is observed that the trunk flare is not evident due to the top most retaining blocks surrounding the bole of the tree. In the spring of 2021, the Wilsons required remedial work on their shoreline due to increase shoreline erosion, extreme spring flooding conditions (2013, 2019), and increased wave action because of increasing boat traffic on the river. ... A new retaining wall was considered as the most viable option.”

[34] The Arborist’s assessment concludes that care was given to minimize root and soils being compromised for the sake of the health of the Butternut tree. However, the best intentions did in fact disturb the soils, and there were some roots compromised during the construction phase. The Arborist’s recommendations include the application of soil amendments to increase root production, irrigation be supplied, and the monitoring of the tree (including inspections following high winds and storms). The Panel notes that the Arborist does not make any recommendation in relation to the removal of and/or modifications to the retaining wall.

[35] No additional documentary or expert opinion evidence from any other Arborist was provided in the hearing. It is noted that the Applicant’s Planner advised the Panel

that he relies on the tree evaluation and the recommendations therein. It is also noted that the Town's Planner proffered some opinion as to his opposing views in respect of the tree evaluation. However, the Panel accepts that Mr. Pavey, being a Certified Arborist, has expertise in such matters and as such the Panel accepts and relies on Mr. Pavey's tree evaluation and the recommendations therein.

[36] The Town takes the position that the retaining wall cannot be located where it is within the Shoreline Buffer, in part, because of the following:

- i) there is a question as to the need for a retaining wall for flood and/or erosion control on the Subject Property;
- ii) there is a question as to whether the retaining wall is for the above noted purpose, or rather as a "hard landscaping" amenity; and,
- iii) the Shoreline Buffer area is to be maintained in a natural state in accordance with the Town Planner's interpretation of provision 3.1.18.2 of the ZBL.

[37] The Town's position is supported by way of the COA Decision, the Town Planning Report (**Exhibit 4**, PDF pages 4 – 18), and by way of opinion evidence of the Town Planner in the hearing.

[38] Firstly, the Panel looks to the questions raised in respect of 'what is the intended purpose of the retaining wall?'

[39] The Panel has carefully examined the documentary evidence in this case, including the various photographs found in **Exhibit 2** (Tabs 9 and 17), considered the opinion evidence of both Planners and the Engineer, and accepts the evidence put forward by the Applicant's witnesses that the Property had experienced, and is susceptible to, flooding and erosion. This is further supported by the description of the Arborist, who has familiarity with the Subject Property (over the course of the past 20 years), of his observations of slope erosion. The Panel heard from the Applicant's

Planner that he had observed first-hand the negative effects of flooding and soil erosion on the Subject Property.

[40] The Panel has also considered the opinion evidence proffered by the experts in the hearing, based on their site investigations, and review of applicable planning policy (in the case of the Planners), in arriving at its findings as to whether the retaining wall is for flood and/or erosion control or hard landscaping.

[41] The Panel notes that the Engineer has over 35 years of professional experience related to municipal infrastructure projects, bridges, culverts, construction of retaining walls, and drainage. It was his evidence in the hearing that he had attended the Subject Property and undertaken site investigations on two occasions, being the Spring of 2022 and the Summer of 2024.

[42] On the first occasion, the Engineer inspected the retaining wall and made cursory measurements. This was followed by his contacting the material supplier and reviewing the engineering data sheets and information in relation to the wall. He also reviewed photos taken by the Applicant of the construction of the retaining wall. He then rendered his opinion as to the structural adequacy or stability of the retaining wall in May 2022 (**Exhibit 1**, Appendix 2, PDF page 56). On this basis, his expert opinion is that the wall is in general conformance with the manufacturer's installation instructions, specification, and accepted engineering design principles, and that in his opinion the wall could be a maximum height of 2.13 m.

[43] The second occasion was in preparation for the hearing, at which time the Engineer inspected the current condition of the retaining wall to update his thoughts from a structural point of view. He observed that the retaining wall is stable and that there is no evidence of movement, and that it is in the same condition as it was two years prior. The Engineer reconfirmed his expert opinion that the retaining wall is in general conformance with engineering principles for segmental block retaining walls and that, based on his review of the manufacturer's installation instructions, specifications

and design guidelines, his opinion continues to be that the maximum total height of the wall should be limited to 2.13 m (**Exhibit 1**, Appendix 3, PDF page 58).

[44] By way of his oral evidence, the Engineer proffered his expert opinion that the retaining wall as constructed will resist flooding and control erosion of the slope. Under cross-examination, the Engineer proffered his opinion that the retaining wall acts as an erosion control facility based on the photo evidence of the construction showing the level of geotextile fabric used, which would hold the material directly behind it. The Town offered no expert opinion evidence in civil engineering to the contrary.

[45] The Panel accepts the expert opinion evidence of the Engineer that the retaining wall serves the purpose of erosion control and has been constructed in general conformance with sound engineering principles, subject to a modification to its height being required to reduce the height to 2.13 m.

[46] Additionally, the Panel is satisfied that the evidence in this hearing sufficiently demonstrates that the Subject Property, with a previously naturalized slope, experienced flooding and erosion, and finds that the retaining wall is intended to combat erosion and any potential effects of future flooding.

Does the request maintain the general intent and purpose of the Zoning By-law?

[47] As previously noted, the Subject Property is zoned "R1". The Panel considered the opinion evidence proffered by the two Planners in respect of the provisions of the ZBL, and more particularly whether a retaining wall is a "use" permitted in the "R1" zone, the Front Yard of the Subject Property, and the Shoreline Buffer.

[48] The Panel notes that the following provisions of the ZBL are noteworthy in this case [emphasis added]:

3.1 Accessory Uses, Buildings and Structures

3.1.1 Permitted Uses:

Where this By-law provides that a lot may be used or a building or structure may be erected or used for a purpose, that purpose shall include any detached accessory building or structure or accessory use.

3.1.3 Location on Lot:

A detached accessory building or structure shall not be erected in any of the required yards unless specifically provided for elsewhere in this By-law.

[49] . In the ZBL, "*Use means the purpose for which any lands, building or structure is arranged, designed or intended to be used, occupied or maintained*". In this case, a retaining wall may be seen as accessory to the permitted residential use of having a purpose of retaining the soil in its place on the land.

[50] The Panel accepts the opinion evidence of the Applicant's Planner and finds that the uses permitted include the single-detached residential dwelling, and accessory buildings, structures, and uses thereto as set out in provision 3.1.1 of the ZBL.

[51] The Applicant's Planner points to provision 3.16 of the ZBL:

3.16 Permitted Uses in all Zones**3.16.1 The following uses are permitted in any zone:**

- g) decorative walls, fences, planting strips, walkways and other landscaping structures subject to the regulations contained herein;
- o) flood or erosion control facilities.

[52] The Applicant's Planner proffered that a flood and/or erosion control facility is not a defined term in the ZBL. However, the Applicant's Planner relies on the opinion evidence of the Engineer, as well as his own first-hand observations of the Subject Property following flooding, and seeing first-hand the condition of the slope of the Front Yard and Shoreline Buffer, and he opined that the retaining wall is a flood and/or erosion control facility.

[53] Further, the general provisions of the ZBL allow for a retaining wall to be permitted in any required yard provision under the ZBL as noted below [emphasis added]:

3.1.9 General:

Drop awnings, clothes poles, flag poles, garden trellises, retaining walls, fences, or signs which comply with the By-laws of the Town, are permitted in any required yard.

[54] As such, the Panel finds that the retaining wall is a permitted accessory use and is permitted in any required yard, including the Front Yard of the Subject Property (which is where it is located). If this is the case, it begs the question as to ‘why a variance may be required?’

[55] In looking back at the initial Zoning Violation letter, it is noted that despite the acknowledgement that a retaining wall is permitted in the Front Yard of the Subject Property, the Town applies the Shoreline Structures and Shoreline Buffers provisions of the ZBL to the retaining wall. One of the questions to consider in this case is ‘whether the provisions of 3.1.18 of the ZBL pertain to the retaining wall?’

[56] The Town Planner’s opinion evidence is that the Shoreline Buffer provisions set out in 3.1.18 need to be applied to the retaining wall, and that the retaining wall is not permitted unless those provisions are complied with. Those provisions are as follows:

3.1.18 Shoreline Structures and Shoreline Buffers:**3.1.18.1 Identification:**

Shoreline structures refer to accessory buildings and structures erected at or near the shoreline in the required yard located between the shoreline and the dwelling. They include buildings and structures that are attached to the land that forms the bed of a navigable waterway.

3.1.18.2 Shoreline Buffer:

A shoreline buffer shall be maintained across a minimum of 75% of a lot, and shall maintain a minimum depth of 15 metres (49.2 feet) measured from the shoreline in all zones except in Shoreline Commercial Zones. The lands located within a shoreline buffer shall be maintained in a natural state except for the removal of dead and decaying vegetation and a 2 metres (6.6 ft.) wide pedestrian pathway from the dwelling, building or structure, to the shoreline. Areas along the shoreline outside the minimum shoreline buffer that are not built on with structures will have soft landscaping.

3.1.18.3 Permitted Uses:

Shoreline structures include the following: boathouse, boat port, deck, dock, gazebo, pump house, outdoor sauna or hot tub, stairs and ramps.

[57] Both Planners opined that the 3.1.18 provisions are applicable to structures within the Shoreline Buffer area and that a retaining wall is not specifically listed as a permitted use in 3.1.18.3 of the ZBL.

[58] The Town Planner opined that the 3.1.18.2 provisions of the ZBL should apply in this case, and the Panel was given the impression by way of his opinion evidence that having to satisfy this provision takes precedence over the other provisions of the ZBL regardless of whether a retaining wall is permitted by way of any other provisions of the ZBL. However, the Panel notes that there is no specific provision in the ZBL or “notwithstanding” language in 3.1.18 that would heighten this provision over any other provision in the ZBL.

[59] Based on the evidence, the Panel accepts that a retaining wall is not included in the list of those types of structures covered by the 3.1.18 provisions, and this, by extension, begs the question as to ‘whether the 3.1.18 policies should apply to a retaining wall for flood and/or erosion control?’ However, in this hearing, the Panel heard evidence from the Applicant’s Planner that he did not disagree with Town Staff, that a variance in respect of the retaining wall was appropriate.

[60] Additionally, the Applicant’s Planner proffered that the retaining wall is a permitted use and is intended to be permitted in any location on the Subject Property where it is needed to serve its intended purpose or function which, in this case, is to control soil erosion. Further, he opined that the 3.1.18 provisions cannot be intended to limit the length and placement of a flood and/or erosion control facility from being constructed because it happens to be situated within a portion of a property that is within 15 m of a shoreline.

[61] The Applicant’s Planner opined that retaining walls and flood and/or erosion control facilities are permitted under the ZBL to be located in any residential zone category and required yard. He opined that it is reasonable and appropriate that a retaining wall, which is intended to address a flood and/or erosion control purpose,

should be permitted to be located so as to address such a hazard, that this is supported by Provincial policy, and that such a retaining wall should not be limited in its length so as to not be effective for its intended purpose.

[62] It was the Town Planner's opinion evidence that the retaining wall is unnecessary to mitigate erosion or flooding, and that a naturalized or vegetated slope would be more appropriate to serve such a purpose.

[63] The Panel is persuaded by the opinion evidence of the Engineer and the Applicant's Planner and finds that the retaining wall can be considered a flood and/or erosion control facility in the context of the ZBL. On this basis, the Panel rejects the assertion that the retaining wall is hard landscaping.

[64] Based on the totality of the opinion evidence in the hearing, the Panel finds it reasonable to reconcile that the provisions of the ZBL should allow for a retaining wall to be permitted to be located wherever it is needed to serve its intended purpose or function which, in this case, is to mitigate impacts of flooding and soil erosion, as the case may be, including in the Shoreline Buffer area of the Subject Property.

[65] Given the evidence in the hearing, the Panel finds that a variance, which would serve to recognize the location of the retaining wall in the Shoreline Buffer area of the Subject Property as shown on the Site Plan, satisfies the test of maintaining the general intent and purpose of the ZBL.

Does the request maintain the general intent and purpose of the Official Plan?

[66] In summary, the Applicant's Planner proffered that the District of Muskoka Official Plan ("MOP") sets out guiding principles dealing with climate change mitigation, adaptation, and resiliency, including erosion and flood control works, and that no approvals would be required to construct the retaining wall under the MOP. He opined that the requested variances, if granted, would maintain the general intent and purpose

of both the MOP and TOP, and that the end result would be a wall that can be visually obscured from the river and re-vegetated by way of the Landscape Plan.

[67] The Town Planner opined that the retaining wall is not appropriate for erosion and/or flood control because, in his opinion, such a function is better served by way of a naturalized slope with plantings as supported by the policies of the MOP, TOP, and provisions of the ZBL. It is his opinion that the retaining wall is hard landscaping and serves to increase the amount of amenity space within the Shoreline Buffer, and that the requested variance should be denied.

[68] The Tribunal prefers the opinion evidence of the Applicant's Planner and accepts that residential uses, and accessory buildings and structures, such as a retaining wall, are not prohibited under the MOP or TOP. The Tribunal finds that the requested variance maintains the general intent and purpose of the Official Plan.

Is the requested variance desirable for the appropriate use of the land, building or structure?

[69] The Panel concludes that the retaining wall provides an important function in the protection against flooding and erosion. The retaining wall also results in an additional amenity area behind and above the boathouse and dock, for the use and enjoyment of the Subject Property. This additional amenity area is located within the same 25% of the lot frontage of the boathouse and dock amenity area, and therefore is in compliance with the 3.1.18 provisions of the ZBL. On this basis, the Panel finds that this test is satisfied.

Is the requested variance minor in nature?

[70] In this case the requested variance, if authorized, simply acknowledges that there is a retaining wall, in accordance with the Site Plan, located within the Shoreline Buffer area.

[71] The Panel notes that there are no objections from the neighbouring Property Owners as to the proposed floating dock and retaining wall.

[72] The Town Planner opined that the retaining wall was a hard landscape amenity, that it is oversized, is not attractive in its appearance, and that he does not accept that it is an appropriate measure intended to provide a flood and/or erosion control function. He was critical of its size and colour, and described it as “egregious” in terms of how it looks. In his opinion, a naturalized slope with plantings would be the preferred measure.

[73] The Applicant’s Planner proffered that the Engineer has identified that the retaining wall serves an erosion control function and that the height of the retaining wall needs to be reduced. He advised that it was intended that the plantings proposed on the Landscape Plan were to be implemented, and that in doing so the visual appearance of the retaining wall would be improved and its noticeability lessened. The Applicant’s Planner also pointed out to the Panel, by way of the more recent photos found in **Exhibit 1**, Tab 7, that over time natural vegetation is growing on its own, lessening the visual impact of the retaining wall.

[74] On the basis of the evidence in the hearing, the Panel is satisfied that the visual impact of the retaining wall can be lessened should the plantings proposed by way of the Landscape Plan (Attachment 2) be implemented.

[75] The Panel prefers the opinion evidence of the Applicant’s Planner and finds that the evidence supports that the requested variance is minor in nature.

The Four Tests - Requested Variance for Floating Dock

[76] The variance requested seeks relief from provision 3.1.6 of the ZBL to permit an increase in the maximum accessory lot coverage from 5% to 5.13% for a floating dock.

[77] On the basis of the opinion evidence in the hearing, the Panel accepts that a floating dock is a Shoreline Structure and permitted use in a Shoreline Buffer.

[78] Both the Applicant and the Town Planners agree that the requested variance in relation to the floating dock is desirable for the appropriate use of the Subject Property, in that it increases the usability of the shoreline activity area of the Subject Property.

[79] While the Planners can agree that the variance for the floating dock is minor in nature and maintains the general intent and purpose of each of the TOP and ZBL, the Panel noted the differences of opinion between the Planners on the three tests. The Town Planner's opinion includes a caveat that the variance for the floating dock only satisfies these three tests in the event that the retaining wall is removed and the Shoreline Buffer area is returned to a natural state.

[80] Under cross-examination, the Town Planner was asked, in the context of his recommendation for approval of the requested variance subject to the conditions, more specifically which of the three tests the requested variance did not meet. To this question, the Town Planner responded that it is his position that it meets the test IF the remainder of the Subject Property is brought into compliance because there is too much non-compliance on the Subject Property in his opinion and that the dock could be permitted if the retaining wall is removed.

[81] On the basis of the opinion evidence, the Panel is not persuaded that there is evidence of any correlation between the floating dock and the retaining wall in relation to an increase in accessory lot coverage, nor that the satisfaction of the three legislative tests ('is the variance minor in nature', and 'does it maintain the general intent and purpose of each of the OP and ZBL') are dependent upon works to be carried out on the Subject Property which are unrelated to the floating dock.

[82] The Panel rejects any assertion of justification for approval of the variance for the floating dock to be used as leverage to require some unrelated undertaking, in this case to link it to the removal and replacement of the retaining wall with vegetation.

[83] The Panel prefers and accepts the evidence of the Applicant's Planner and finds that the variance for relief for the increase in maximum accessory lot coverage to permit the proposed size of the floating dock satisfies all four tests set out in s. 45(1) of the Act.

Matters of Provincial Interest

[84] Having had regard to matters of provincial interest as set out in s. 2 of the Act and the opinion evidence proffered by the Planners and Engineer, the Panel finds that the granting of the requested variances to permit the proposed floating dock and to recognize the retaining wall would not be contrary to matters of Provincial interest.

Consistency with PPS 2024

[85] The Panel has considered the opinion evidence provided by the Planners in the hearing in relation to the PPS 2020 and the submissions of the Parties that the opinion evidence provided in the hearing is satisfactory for the Panel to consider in its evaluation of the requested variances before them. The Panel finds that the requested variances to permit the increase in accessory lot coverage for the floating dock and to recognize the retaining wall in the Shoreline Buffer, subject to modifications to the wall in accordance with the Engineer's Recommendations and the undertaking of plantings to assist in minimizing the potential for erosion, to increase the net environmental benefit, and to soften the appearance of the wall, are consistent with the PPS 2024.

CONCLUSIONS

[86] In making its Decision, the Panel has had regard to matters of provincial interest as set out in s. 2 of the Act, as well as the Decision of the COA and the information

considered by the COA. In consideration of the expert opinion evidence in the hearing, the Panel finds that the requested variances are consistent with the PPS 2024 and meet the four tests as set out in s. 45(1) of the Act. The Panel finds that the requested variances, individually and collectively, maintain the general intent and purpose of the TOP, maintain the general intent and purpose of the ZBL, are desirable for the appropriate use of the buildings, structures, and land, and are minor in nature.

[87] The Panel finds that a retaining wall for flood and erosion control is permitted in the R1 zone in any yard or setback required under the ZBL. In this case, the Panel finds that the requested retaining wall variance, as authorized, simply acknowledges that there is a retaining wall, in accordance with the Site Plan, located within the Shoreline Buffer area.

[88] The Panel finds that the Town's requested conditions in respect of the variance for the floating dock are not appropriate or required. The Panel also finds that there should be conditions in respect of the retaining wall variance based on the evidence in the hearing, and such conditions as deemed appropriate and reasonable are as set out in the Order.

ORDER

[89] **THE TRIBUNAL ORDERS** that the appeal is allowed;

[90] **THE TRIBUNAL ORDERS** that the following variance is authorized:

1. To permit a maximum accessory lot coverage of 5.13%, whereas a maximum of 5% is permitted pursuant to Zoning By-law No. 2008-66P, as amended.

[91] **AND THE TRIBUNAL ORDERS** that the following variance is authorized, subject to the conditions as set out below:

2. To recognize a retaining wall within the Shoreline Buffer on the Property, as shown on the Site Plan (Attachment 1) conditional upon the following:
 - i. A maximum height of the retaining wall of 2.13 metres; and,
 - ii. The implementation of the proposed plantings as shown on the Landscape Plan (Attachment 2) to the satisfaction of the Town of Huntsville.

“Sharon L. Dionne”

SHARON L. DIONNE
MEMBER

“N. Allam”

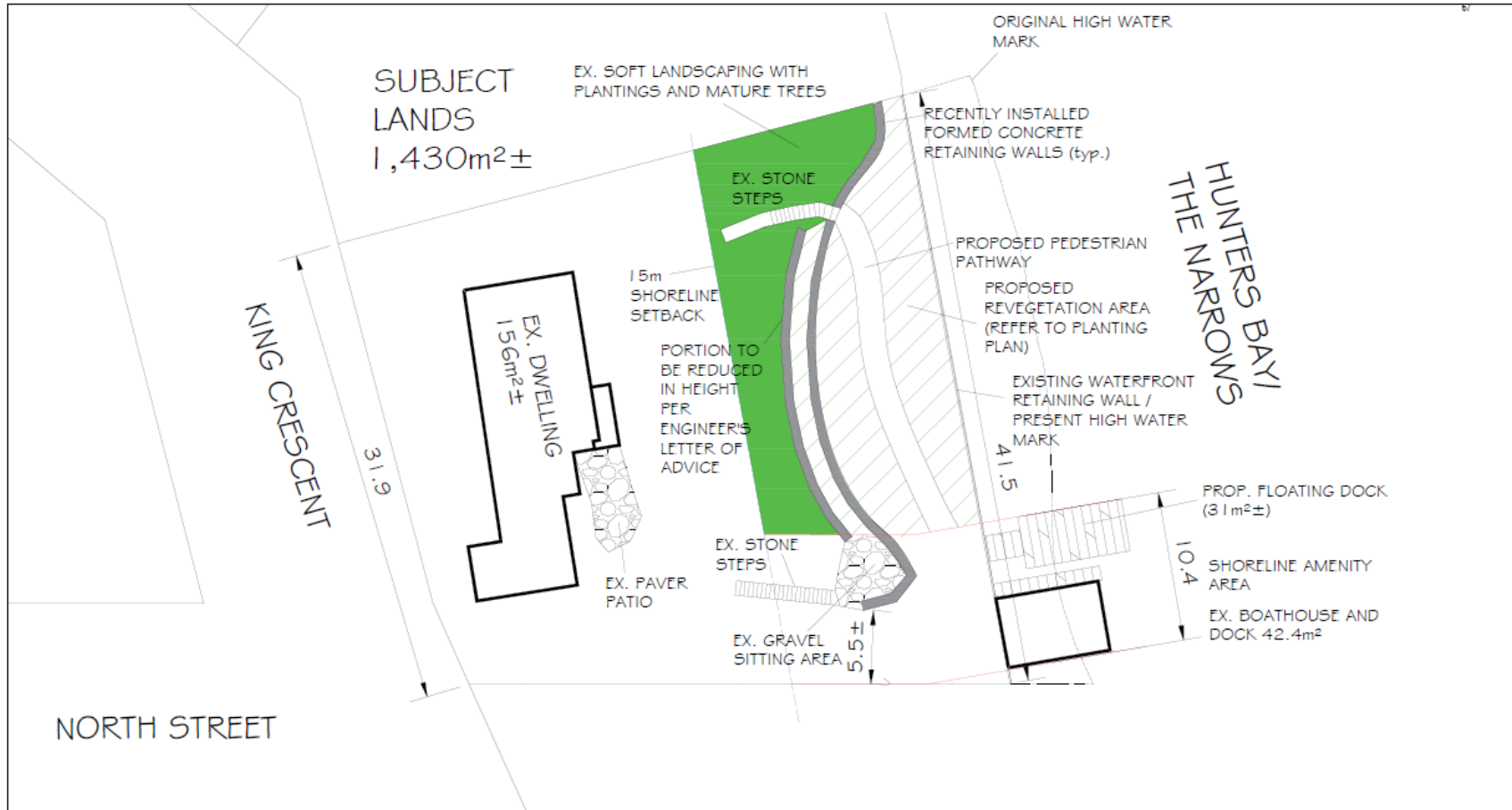
N. ALLAM
MEMBER

Ontario Land Tribunal

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

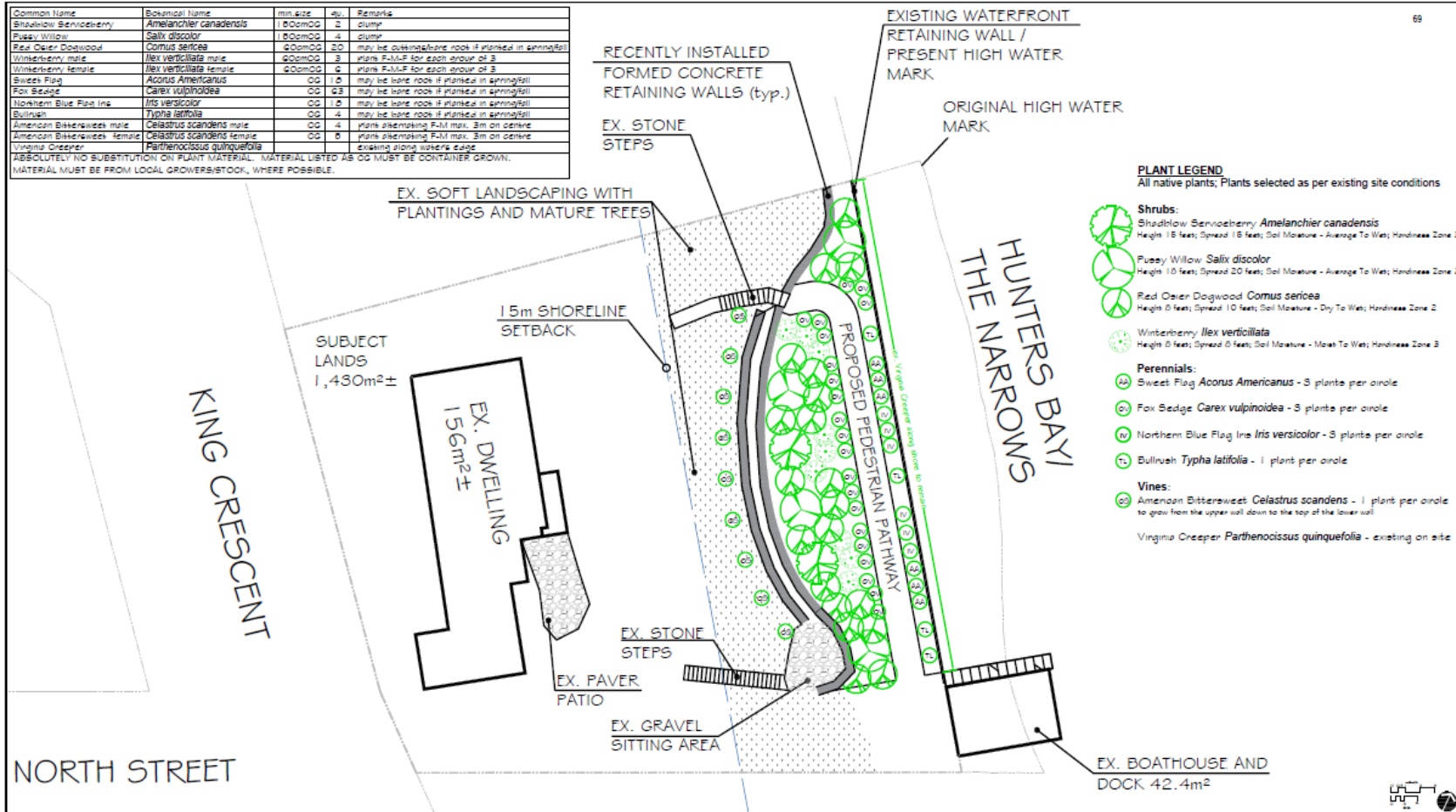
The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1



<p>PROJECT: SKETCH FOR MINOR VARIANCE</p>	<p>LEGAL DESCRIPTION: PART OF PLAN 37 OF THE TOWN OF HUNTSVILLE DISTRICT OF MUSKOKA LOT 1, PLAN 37</p>	<p>WAYNE SIMPSON & ASSOCIATES PLANNING AND DEVELOPMENT CONSULTANTS 3-76 KING WILLIAM STREET HUNTSVILLE, ONTARIO P1H 1E4 TEL: (705) 709-9092 FAX: (705) 709-9094 info@waeplanning.ca</p>	<p>DATE: AUG 9, 2021</p>
<p>CLIENT: WILSON</p>	<p>LOCATION: 32 KING CRESCENT, HUNTSVILLE</p>	<p>WSA FILE No.: 2414</p>	<p>SCALE: 1:250 METRIC REVISION No.: JUN 27, 2023 FILE NAME: WILSONCONCEPT.dwg</p>

ATTACHMENT 2



PROJECT: LANDSCAPE SKETCH	LEGAL DESCRIPTION: PART OF PLAN 37 OF THE TOWN OF HUNTSVILLE DISTRICT OF MUSKOKA LOT 1, PLAN 37	DATE: May 2022
		SCALE: 1:250 (if printed 1:1 on 11x17)
CLIENT: WILSON	LOCATION: 32 KING CRESCENT, HUNTSVILLE	REVISION No.: Rev. 1: June 14, 2022
		FILE NAME: WILSON.dwg