

RIDEAU VALLEY CONSERVATION AUTHORITY
Box 599, 3889 Rideau Valley Drive
Manotick, Ontario, K4M 1A5
(613) 692-3571, 1-800-267-3504

Meeting Held Electronically due to COVID-19 State of Emergency

APPROVED MINUTES

Executive Committee Meeting November 23, 2021 7:00 pm. #9/21

Present:	Judy Brown Victor Heese Anne Robinson	Brian Dowdall Pieter Leenhouts
Staff:	Sommer Casgrain-Robertson Eric Lalande	Terry Davidson Michelle Paton

1.0 Hearing of Applicant:

File Number: RV5-4621
Date Received: September 8, 2021

Name: OttawaWest Development Inc. (Marc Steenbakker)
Address: 6435 Fallowfield Road
 Ottawa, ON K2S1B8

Purpose of Development Application:

1. Construction of a new dwelling and septic system located within the floodplain associated with Flowing Creek.

Legal Description of Property:

Part 21, Concession 8, in the City of Ottawa, known as 6435 Fallowfield Road.
Roll # 0614271825094900

Motion 1-211123	Moved by:	Brian Dowdall
	Seconded by:	Judy Brown

That the RVCA Executive Committee sit as a Hearing Board.

Motion Carried

The Chair, Pieter Leenhouts, called the meeting to order at 7:00 p.m. and asked for a round of introductions.

Chair Leenhouts, outlined the purpose of a hearing under Section 28 (12) of the *Conservation Authorities Act*, R.S.O. 1990 as amended to Marc Steenbakker.

Marc Steenbakker was affirmed. Mr. Steenbakker's Agents, Benjamin Clare, Planner, and Adam O'Connor, Civil Engineer, both of McIntosh Perry Consultant Engineers Ltd. were also affirmed. Eric Lalande and Terry Davidson representing the Rideau Valley Conservation Authority were affirmed.

The following exhibits, slides, and information were presented by Eric Lalande:

- Exhibit 1 - Application RV5-4621 received September 8, 2021
- Exhibit 2(a) - Location plan – 6435 Fallowfield Road
 - Severed parcel
 - Current Use
 - Residential Dwelling
 - Auxiliary Buildings
 - Agricultural Buildings
 - Lot frontage along Fallowfield Road, nearest intersection Huntley Road, north of the Village of Richmond
 - Surrounding land use:
 - Residential
 - Aggregate Resource
 - Agricultural
 - Flowing Creek travels through the property
 - Lot is partially located within the floodplain of Flowing Creek
 - Frontage of approximately 184.16 metres
 - Depth of approximately 380.46 metres
- Exhibit 2(b) - Location Plan – Constraints
- Slide 1 - Application Summary
 - Proposed development is to permit the construction of a new dwelling and septic system located within the floodplain associated with Flowing Creek
 - Applicant is seeking to replace the existing dwelling (338 m² total gross floor area) located within the floodplain. The existing dwelling and multiple auxiliary buildings are to be demolished. Proposed dwelling with an attached garage is proposed to be 531 m² total gross floor area as a single storey.
 - Regulated flood level in the area of proposed development is 2107.23 metres above sea level
- Exhibit 3(a) - Proposed Site Plan – Grading Plan. Prepared by McIntosh Perry
- Exhibit 3(b) - Proposed Site Plan - Aerial Site Photo
- Exhibit 4 - Site Photo from the driveway
- Slide 2 - RVCA Policy Considerations
 - The RVCA Policies Regarding the Construction of Buildings and Structures, Placing of Fill and Alterations to Waterways outline specific policies that apply to the proposed development:
 - Section 1.1 General Principles, indicates the following:
 - a) New development must result in no significant impact on expected flood levels or velocities, taking into consideration the direct and cumulative effects of the development on flood plain conveyance capacity and storage
 - c) New development must not increase the risks to public safety which are expected to be present during the regulatory flood (or

more frequent floods); in this regard, the availability of access to and egress from the structure and the potential depths of water over access routes will be the primary consideration. It is noted that exceptions are outlined in section 1.3 related to reconstruction, relocation, repairs and renovations which are proposed by this application

Slide 3 -

RVCA Policy Considerations Cont'd
Section 1.3 1)

Notwithstanding Section 1.2 (1), development may be permitted associated with the **reconstruction or relocation** of a building located on an existing lot of record within the 1:100 regulatory floodplain, provided that it has not been destroyed by flooding and it is demonstrated, to the satisfaction of the Conservation Authority, that the control of flooding, erosion, pollution or conservation of land will not be affected by its reconstruction. Consideration must be given to reducing the risk of flooding and property damage through relocation of the building.

For the reconstruction or relocation of a building within the 1:100 regulatory floodplain the submitted plans shall clearly demonstrate that the building:

- a) Can not be relocated to an area outside the flood hazard and if there is no feasible alternative site, that it is located in an area of least (and acceptable) risk;
- b) Will be protected from the flood hazard through incorporation of appropriate floodproofing measures as outlined in Section 1.4 (Floodproofing)
- c) The building would previously have been considered habitable; and
- d) Will not exceed the original habitable floor area or the original footprint area of the previous structure.
Permission will generally be refused for the reconstruction of derelict or abandoned buildings in the floodway.

Slide 4 -

RVCA Policy Considerations Cont.

Somewhat larger additions resulting in increases of between 20% and 50% but not exceeding a maximum of 50 square metres (538 square feet) may be permitted in the floodway provided all of the following provisions are met:

- (i) The addition meets the floodproofing provisions outlined in Section 1.4;
- (ii) The addition does not alter the use or the potential use of the building or structure; and
- (iii) Access is safe as per Section 1.4.4 (Safe Access/ Egress).

No application resulting in the cumulative exceedance of 50% of the gross floor area or 50 square metres (548

square feet), whichever is the lesser, shall be permitted in the floodway.

The applicant is basing the total gross areas of their proposal, upon the cumulative floor area of existing buildings. The removal of auxiliary buildings in favour of additional habitable space is not contemplated in policy.

Slide 5 - RVCA Policy Considerations Cont.

Section 1.4.4 policy states:

- For vehicular and pedestrian access routes (municipal roadways and private rights-of-way) safe access will be considered to be available if the depth of flooding at regulatory (1:100 year) flood level along the full length of the travelled surface of the access roadway or right-of-way is not greater than 0.3 metres.

For the purposes of this policy, the existing driveway would be able to meet the requirements of the policy subject to minor improvements/repair.

Slide 6 - Other Policy Considerations Cont.

Provincial Policy Statement 2020

- 3.1.2 Development and site alteration shall not be permitted within:
- **d) a floodway regardless of whether the area of inundation contains high points of land not subject to flooding.**

Slide 7 - Project Considerations

- The proposed application is seeking to relocate a dwelling on a lot that has been demonstrated to have available land outside of the floodplain for the proposed use.
- The applicant is seeking to replace the existing dwelling of 338 m² total gross floor areas with a proposed dwelling with an attached garage proposed to 531 m² total gross floor area as a single storey.
- The project is seeking to demolish approximately 800 m² existing structures to accommodate the dwelling. Which includes a garage, and two buildings which have previously been removed.

Exhibit 6 - Letter of Notification

Slide 8 - *Conservation Authorities Act*

Right to Hearing

- (12) Permission required under a regulation made under clause (1) (b) or (c) shall not be refused or granted subject to conditions unless the person requesting the permission has been given the opportunity to require a hearing before the authority or, if the authority so directs, before the authority's executive committee. 1998, c. 18., Sched. I, s. 12

- Slide 9 - Summary
Approval at a staff level cannot be made for the following reasons:
1. The floodplain of Flowing Creek Rideau River is administered as a one zone floodplain, wherein the floodway is considered to be the entire limits of the mapped regulated floodplain.
 2. The subject property has sufficient and available land to develop outside of the floodplain.
 3. The development has not adequately demonstrated the inability to avoid developing in the floodplain.
 4. The lot was created based upon the ability to locate a new dwelling outside of the floodplain.
 5. The granting of permission will set a precedent.
 6. The granting of permission may jeopardize the health or safety of persons or result in the damage or destruction of property.
- Slide 10 - Ontario Regulation 174/06
3. (1) The Authority may grant permission for development in or on the areas described in subsection 2 (1) if, in its opinion, **the control of flooding, erosion, dynamic beaches, pollution or the conservation of land** will not be affected by the development.
O. Reg. 174/06, s. 3 (1).
- Slide 11 - Next Steps:
Approve the application
Approve the application with conditions
Deny the application.
- Slide 12 - Conditions:
Any decision to approve the proposal should consider the following conditions as part of their direction to staff for administration of permission issuance:
1. That private services be designed and approved in accordance with the Ontario Building Code, to the satisfaction of the Ottawa Septic System Office.
 2. That a notice on title be registered with a warning clause advising of the dwelling being located within the floodplain hazard limits associated with the Flowing Creek floodplain.
 3. The building plans be submitted and reviewed to determine adequate floodproofing are integrated into the design.
 4. That a professional engineer certifies the designed structure shall meet or exceed the floodproofing standards of the RVCA's Policies Regarding the Construction of Buildings and Structures, Placing of Fill and Alterations to Waterways.
 5. That standard permit conditions related to access, inspection and fill placement be implemented.
 6. That a permit be approved for up to 2 years from the date of permit issuance.

Summary of Considerations:

Application for Development

Eric Lalande noted that the application seeks a permit for the construction of a new dwelling and septic system located within the floodplain associated with

Flowing Creek. It was noted that private sewage system information and building plans were not required at the time of application. This supporting information could be included as a condition of review and approval if necessary.

Site Description

The subject lands, known municipally as 6345 Fallowfield Road, are located along the north side of Fallowfield Road west of Huntley Road. The subject lands are located along Flowing Creek and are affected by the floodplain associated with this watercourse, recently mapped in 2016. The subject land currently has an existing dwelling (338 m² total gross floor area) located within the floodplain. The existing dwelling and multiple auxiliary buildings are to be demolished. The proposed dwelling, with attached garage, is proposed to be 531 m² total gross floor area as a single storey.

The subject lands were subject to a severance (consent) application which was approved by the City of Ottawa. The application resulted in the severing off of a vacant parcel for future residential. As part of the severance application, it was required to demonstrate a viable envelope for development outside of the floodplain on the subject lands. The applicant demonstrated the available building envelope in order to obtain support from the RVCA as part of the *Planning Act* approval process. Despite the available land outside of the floodplain on the subject lands, the application is being made to locate the dwelling within the floodplain in an area near the existing dwelling based on site preference by the applicant.

The regulated flood level in the area of the proposed development is 107.23 metres above sea level.

Considerations

The application submitted on September 8, 2021, along with supporting site plan and grading documents. The submitted information identifies the location and scale of existing and proposed buildings, septic system, grades, and access. It further denotes the location of the regulated floodplain.

Legislation and Regulation Considerations:

Conservation Authorities Act – Section 28

28 (1) *Subject to subsections (2), (3) and (4) and section 28.1, no person shall carry on the following activities, or permit another person to carry on the following activities, in the area of jurisdiction of an authority:*

2. Development activities in areas that are within the authority's area of jurisdiction and are,
i. hazardous lands,

28.1 (1) *An authority may issue a permit to a person to engage in an activity specified in the permit that would otherwise be prohibited by section 28, if, in the opinion of the authority,*

- (a) *the activity is not likely to affect the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;*
- (b) *the activity is not likely to create conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; and*
- (c) *any other requirements that may be prescribed by the regulations are met. 2017, c. 23, Sched. 4, s. 25.*

Hearing

28.1 (5) *An authority shall not refuse an application for a permit or attach conditions to a permit unless the applicant for the permit has been given an opportunity to be heard by the authority. 2017, c. 23, Sched. 4, s. 25.*

The applicant was advised prior to the application being made and by formal letter, dated November 4, 2021, that staff would not be in a position to support the application and thus the application has been brought forward to a hearing with the Executive Committee.

Ontario Regulation 174/06, Development Prohibited – Section 2, 3, 5,

2. (1) *Subject to section 3, no person shall undertake development or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,*

(c) *hazardous lands;*

3. (1) *The Authority may grant permission for development in or on the areas described in subsection 2 (1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development. O. Reg. 174/06, s. 3 (1).*

Policy Considerations

The RVCA Policies Regarding the Construction of Buildings and Structures, Placing of Fill and Alterations to Waterways outline specific policies that apply to the proposed development:

Section 1.1, General Principles, of the RVCA Policies regarding Development indicates the following:

- a) *New development must result in no significant impact on expected flood levels or velocities, taking into consideration the direct and cumulative effects of the development on flood plain conveyance capacity and storage capacity.*
- c) *New development must not increase the risks to public safety which are expected to be present during the regulatory flood (or more frequent floods); in this regard, the availability of access to and egress from the*

structure and the potential depths of water over access routes will be the primary consideration.

Section 1.2 (1) states that development within the 1:100 year regulatory floodplain shall not be permitted except as allowed by specific policies elsewhere in this document. This includes:

Development within the 1:100 year regulatory floodplain shall not be permitted except as allowed by specific policies elsewhere in this document. This includes:

- i) new buildings and structures;
...”*

The exceptions outlined in section 1.3 relate to reconstruction, relocation, repairs and renovations.

The proposed development is expressly prohibited by policy and therefore cannot be supported for approval.

Section 1.3 1)

Notwithstanding Section 1.2 (1), development may be permitted associated with the reconstruction or relocation of a building on an existing lot of record within the 1:100 regulatory floodplain, provided that it has not been destroyed by flooding and if is demonstrated, to the satisfaction of the Conservation Authority, that the control of flooding, erosion, pollution or conservation of land will not be affected by its reconstruction. Consideration must be given to reducing the risk of flooding and property damage through relocation of the building.

For the reconstruction or relocation of a building within the 1:100 regulatory floodplain the submitted plans shall clearly demonstrate that the building:

- (a) can not be relocated to an area outside the flood hazard and if there is no feasible alternative site, that it is located in an area of least (and acceptable) risk; and*
- (b) will be protected from the flood hazard through incorporation of appropriate floodproofing measures as outlined in Section 1.4 (Floodproofing)*
- (c) the building would previously have been considered habitable; and*
- (d) will not exceed the original habitable floor area or the original footprint area of the previous structure. Permission will be generally be refused for the reconstruction of derelict or abandoned buildings in the floodway.*

The subject lands have viable land outside of the floodplain, that can suitably accommodate the dwelling. It should be noted that as part of a recent *Planning Act* approval (Consent to Sever) it was demonstrated that

the lot created had sufficient and viable area outside of the floodplain to reconstruct a dwelling.

Grading plans provided confirm that while access is provided through the floodplain, safe access standards can be provided based on the existing grades with minor repairs to address a deficiency near the entrance to the site. The proposed development is seeking to replace the existing dwelling within the floodplain, which is expressly contradicting Section 1.3 1) (a). The RVCA has not been provided sufficient justification that the dwelling cannot locate outside of the floodplain.

Additional Considerations

The proposed scale of development exceeds the maximum increase for development within a floodplain. While it is noted that the proposal does not meet Section 1.3 1) (a), the Policies for Type II additions, where floodproofing and safe access are provided would allow for a maximum increase of 50 m² or 50% whichever is less. The proposed development is seeking a dwelling that is beyond the maximum size permitted under Section.

1.3.3 (2) Type II Additions (Residential

Somewhat larger additions resulting in increases of between 20% and 50% but not exceeding a maximum of 50 square metres (538 square feet) may be permitted in the floodway provided all of the following provisions are met:

- (i) the addition meets the floodproofing provisions outlined in Section 1.4; and*
- (ii) the addition does not alter the use or the potential use of the building or structure; and*
- (iii) access is safe as per Section 1.4.4 (Safe Access / Egress)*

No application resulting in the cumulative exceedance of 50% of the gross floor area or 50 square metres (538 square feet), whichever is the lesser, shall be permitted in the floodway.

The applicant is basing the total gross areas of their proposal, upon the cumulative floor area of existing buildings. The removal of auxiliary buildings in favour of additional habitable space is not contemplated in policy.

Provincial Policy Statement, 2020

- 3.1.2 Development and site alteration shall not be permitted within:*
- d) a floodway regardless of whether the area of inundation contains high points of land not subject to flooding*

Staff Recommendation

Approval at a staff level cannot be made for the application for development of residential building for the following reasons:

1. The floodplain associated with Flowing Creek is administered as a one zone floodplain, wherein the floodway is considered to be entire limits of the mapped regulated floodplain.
2. The subject property has sufficient and available land to develop outside of the floodplain.
3. The development has not adequately demonstrated the inability to avoid developing in the floodplain.
4. The lot was created based on the ability to locate a new dwelling outside of the floodplain.
5. The granting of permission will set a precedent.
6. The granting of permission may jeopardize the health or safety of persons or result in the damage or destruction of property.

Next Steps:

- Approve the application
- Approve the application with condition
- Deny the application

Recommended Conditions:

Any decision to approve the proposal should consider the following conditions as part of their direction to staff for administration of permission issuance:

1. That private services be designed and approved in accordance with the Ontario Building Code, to the satisfaction of the Ottawa Septic System Office.
2. That a notice on title be registered with a warning clause advising of the dwelling being located within the floodplain hazard limits associated with the Flowing Creek floodplain.
3. The building plans be submitted and reviewed to determine adequate floodproofing are integrated into the design.
4. That a professional engineer certifies the designed structure shall meet or exceed the floodproofing designed standards of the RVCA's Policies Regarding the Construction of Buildings and Structures, Placing of Fill and Alterations to Waterways.
5. That standard permit conditions related to access, inspection and fill placement be implemented.
6. That a permit be approved for up to 2 years from the date of permit issuance.

Eric Lalande noted that the applicant has worked with the RVCA since 2018. Although advised that his application would not be able to be approved at staff level, the applicant decided to move forward with the application. Mr. Lalande

confirmed that staff will continue to work with the applicant to achieve a satisfactory resolution.

Pieter Leenhouts, Chair, thanked Eric Lalande for his information. Chair Leenhouts then asked Marc Steenbakker to proceed with his presentation.

Ben Clare, Planner with McIntosh Perry Consultant Engineers Ltd., advised that he would be speaking on behalf of the applicant. Mr. Clare confirmed that he has been working with Mr. Steenbakker since 2018. He confirmed that his client had understood that there were some constraints and has been in consultation with RVCA staff.

Mr. Clare raised a point of clarification: Consent to Sever was approved on the subject land; RVCA approval was needed by the City of Ottawa under Section 50 of the Zoning By-law. Mr. Clare stated that the status of the Consent to Sever does not have a significant bearing on the application.

Mr. Clare reviewed the location of the subject lands and the health and safety issues associated with the application.

The Consent to Sever application confirmed that there is unconstrained developable land.

Mr. Clare noted that Eric Lalande had agreed that safe access exists. Mr. Clare also confirmed that Eric Lalande had advised that approval at a staff level was not possible.

Marc Steenbakker confirmed that the proposed development would take advantage of the existing driveway and that the setbacks would provide some privacy. The appropriate setback from Flowing Creek would be respected with the vegetation left in its natural state. No negative impacts are anticipated as the location of the new house would not require the removal of foliage.

Mr. Steenbakker acknowledged the expanded footprint of the proposed single-storey dwelling. The practicalities of a 2-storey building with basement have led him to believe that a single-storey slab on grade would be more accessible. The proposed dwelling does exceed the size limits but not substantially when considering scale. The area of the dwelling is a half-percent of the lot size.

The overall disturbance to the subject lands would be almost negligible as the impermeable surfaces would not change.

Mr. Clare advised that neither Mr. Steenbakker nor the previous owner used the LiDAR data available at the time. Discrepancies of up to 10 centimetres have been noted which supports anecdotal flood risk.

Mr. Steenbakker confirmed that safe access was available. In response to the Provincial Policy Statements that hazardous lands could be unsafe for development. Mr. Clare advised that his client is satisfied that there is no hazard. There would be no danger to public health.

Chair Leenhouts thanked Marc Steenbakker and Ben Clare for their presentations.

Discussion

In response to a question from Judy Brown, Eric Lalande confirmed that the regulated flood level in the area of proposed development is 107.23 metres above sea level and clarified that the flood level does vary across the subject property. Mr. Lalande noted that there is clear policy direction: if there is an opportunity to direct development outside the hazard area, then development is to be directed outside the area.

In response to a question from Anne Robinson, Eric Lalande confirmed that severance was conditional on the applicant demonstrating that developable land was available. The Consent to Sever had lapsed after one year.

In response to a question from Anne Robinson, Eric Lalande clarified that staff review floodplain mapping which uses LiDAR technology. In 2018, there were some early discussions on reconciling the use of LiDAR. Mr. Lalande confirmed that a 10-centimetre fluctuation is common.

In response to a question from Brian Dowdall, Marc Steenbakker confirmed that the proposed development would be farther from the creek. Mr. Steenbakker added that the septic system would also be moved farther away from the creek. Mr. Steenbakker stated that he really believes in his proposal.

In response to a question from Brian Dowdall, Marc Steenbakker stated that the property has never flooded.

In response to a question from Brian Dowdall, Eric Lalande explained that the floodplain associated with Flowing Creek is administered as a one zone floodplain, wherein the floodway is considered to be entirely within the mapped regulated floodplain.

Marc Steenbakker summarized his proposal noting that no tree removal would be required, the dwelling and septic system would be moving farther from Flowing Creek, Mr. Steenbakker explained that it would not be practical to rebuild the house on the land identified as being outside the of the floodplain as a horse barn and paddock are located there. Mr. Steenbakker confirmed that there is one house on an 80-acre parcel but there is potential for two dwellings on two parcels (30 acres and 50 acres)

Motion 2-211123

Moved by:

Judy Brown

Seconded by:

Anne Robinson

That the RVCA Executive move in camera.

Motion Carried

Motion 3-21123

Moved by: Anne Robinson

Seconded by: Brian Dowdall

That the RVCA Executive Committee members move out of camera.

Motion Carried

Pieter Leenhouts, Chair, stated that after consideration, the Executive Committee denied the application for the following reasons:

1. The subject property has sufficient and available land to develop outside of the floodplain.
2. The development has not adequately demonstrated the inability to avoid developing in the floodplain.
3. The lot was created based upon the ability to locate a new dwelling outside of the floodplain.
4. The granting of permission will set a precedent.
5. The granting of permission may result in the damage or destruction of property.

Motion 4-211123

Moved by: Brian Dowdall

Seconded by: Anne Robinson

That the RVCA Executive Committee move out of Hearing Board and sit as an Executive Committee.

Motion Carried

2.0 Approval of Minutes, November 15, 2021

Motion 5-211123

Moved by: Anne Robinson

Seconded by: Victor Heese

That the Executive Committee Meeting minutes of June 24, 2021 be approved as circulated.

Motion Carried

3.0 Adjournment

The meeting adjourned at 8:27 p.m. on a motion by Judy Brown that was seconded by Victor Heese.

Pieter Leenhouts
Chair

Michelle Paton
Recording Secretary