

ISSUE DATE:

**July 7, 2009**



PL041113

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

Golden Estates Limited has appealed to the Ontario Municipal Board under subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the Committee of Adjustment of the City of North Bay which dismissed an application numbered B-03-04R for consent to convey part of the lands composed of Parts of Lot 4 and 5, Registered Plan 36M 262, located on Garland Drive, in the City of North Bay  
OMB File No. C040345

Golden Estates Limited has appealed to the Ontario Municipal Board under subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the Committee of Adjustment of the City of North Bay which dismissed an application numbered A-34-04 for variance from the provisions of By-law 28-80, as amended, respecting Lot 5 of Plan 36M 262, located on Garland Drive, in the City of North Bay  
OMB File No. V050120

**APPEARANCES:**

**Parties**

**Counsel**

City of North Bay

M. Burke

Golden Estates Limited

R. Lucenti

**DECISION DELIVERED BY G. C. O'CONNOR AND ORDER OF THE BOARD**

---

**The Application**

This matter relates to an appeal by Golden Estates Limited from the decision of the City of North Bay's Committee of Adjustment to dismiss applications for consent and variances. Golden Estates Limited made application to sever two lots from their holdings known as Parts of Lot 4 and 5, Garland Drive, in the City of North Bay.

The Parties reached an agreement in these proceedings, with the result that the appeals with respect to Consent application B-03-04R and Variance application A-34-04

are allowed in part as per the executed Minutes of Settlement (Exhibit 9 and set out as Attachment "1") to this Order.

Mr. Ian Kilgour, a qualified planner with the City of North Bay, testified that a required environmental impact study had been submitted in December 2006. Also, the City and the Applicant have agreed to implement mitigation measures for the two new lots to be created and for the two retained lots by way of executed Site Plan Control Agreements as per Exhibit 7. The Planner testified that the Applicant proposes that the two new lots to be created will be Minimal Impact Lots in conformity with the Official Plan. In addition, he also proposes to incorporate Minimal Impact Lot principles on the already developed retained portions. The Planner also testified that the North Bay-Mattawa Conservation Authority did not object to the proposal.

Mr. Kilgour was also of the opinion that the proposal represents good planning, is in the public interest and that no adverse impact results from the variances as proposed. He also confirmed the four tests of subsection 45(1) of the *Planning Act* is being met.

Dr. Jean-Marc Filion, a professor at Nipissing University, appeared before the Board to address his concerns pertaining to the Trout Lake water quality. Dr. Filion presented a "Phosphate Study" to the Board in support of his claim that new lot creation will have negative impacts on the water quality. He explained that the phosphorous level is presently at 6.9 and that his target is a level of 7. In his opinion, each new lot degrades the level. However, Dr. Filion did express his satisfaction that new experimental septic systems are being proposed for the new lots in conjunction with other units already existing on other lake lots.

Dr. Filion also expressed his concerns that the proposed settlement would create precedence for additional lot creation on the lake with respect to the remaining ten lots. In his opinion, the requested variance is not minor and he explained that there are historical reasons for authorizing such variances and requested that the Board attach Exhibit 1 as Attachment "2" to this Decision to provide further clarification as to why such variances are permitted.

### **Board Findings and Conclusion**

Based on Mr. Kilgour's uncontroverted expert evidence, the Board is satisfied that proper regard has been had to subsection 51(24) of the *Planning Act* and that the four tests of subsection 45(1) of the *Planning Act* have been met.

In conclusion, the Board allows the appeals in part. The Board authorizes the variances as applied for and grants provisional consent subject to the terms of the attached Minutes of Settlement as set out in Attachment "1" to this Order.

So Orders the Board.

"G. C. O'Connor"

G. C. O'CONNOR  
MEMBER

**ATTACHMENT "1"**

OMB Case No. PL041113  
OMB File No. C040345 (City File B-30-04)  
OMB File No. V050120 (City File A-34-04)

Hearing Date: June 10, 2009

Appeal by Golden Estates Limited

**Minutes of Settlement**

Whereas the Appellant, Golden Estates Ltd has provided an environmental Impact Study by Michalkski Nielsen Associates Limited entitled Trophic State – Mitigation Measures, Orsi Property, City of North Bay dated December 2006;

And Whereas the Appellant and the City of North Bay have agreed to terms to implement the recommended mitigation measures for the 2 new lots to be created and for the 2 lots to be retained by way of executed Site Plan control Agreements dated June 6, 2009;


And Whereas based upon the executed Site Plan Control Agreements the City of North Bay supports the approval of the appeals, for the creation of 2 lots on Trout Lake, with the required minor variances, as being in compliance with the North Bay Official Plan, subject to the prior registration of the said Site Plan Control Agreements;

Now Therefore the parties hereto do hereby consent to the approval of the above applications, subject to the following condition:

1. That the Site Plan Control Agreements dated June 6, 2009 be registered against the title to the 2 new lots and the 2 retained lots on the subject properties.

Dated at North Bay, Ontario, this 10<sup>th</sup> day of June, 2009.

Golden Estates Limited

Per  \_\_\_\_\_

I have the authority to bind the corporation

The Corporation of the City of North Bay

By its counsel  \_\_\_\_\_

## ATTACHMENT "2"



The Corporation of the  
City of North Bay

200 McIntyre St. East  
P.O. Box 360  
North Bay, Ontario  
Canada P1B 8H8  
Tel: (705) 474-0400

Office of the  
Chief Administrative Officer

Direct Line: (705) 474-0626, extension 513  
Direct Fax: (705) 474-4925  
E-Mail: [tms@mbox.city.north-bay.on.ca](mailto:tms@mbox.city.north-bay.on.ca)

April 14, 2000

Mr. Frank Orsi  
P. O. Box 910  
Station Main  
North Bay, Ontario  
P1B 8K1

Subject: Garland Drive Subdivision - Plan M-262

Further to your enquiries on the above-noted property, we offer the following:

General comments

1. Plan M-262 was created by way of Consent and was registered on September 8, 1953. Plan M-262 created six lots with Lots 2-5, inclusive, being for residential purposes and having minimum frontages of 200 feet (61.0 metres) each.
2. On April 21, 1976, Plan M-262 was approved by way of Consent to be subdivided further (Committee of Adjustment file B-29-76R). This approval could have resulted in the subdivision of Lots 2, 3, 4 and 5, Plan M-262, into a total of eight lots (the eight parts of Plan 36R-5282), *if the approval had not lapsed, which it has*, pursuant to subsection 53(14) of the *Planning Act*.
3. Plan 36R-5282 was deposited on July 11, 1979. The dimensions of each part on Plan 36R-5282 satisfied the Zoning By-law frontage and lot area requirements that were in force *at the time the Plan was registered* (minimum 100 foot frontage; minimum one acre lot area). Those requirements have since changed; they are now minimum 200 foot frontage; minimum two acre lot area.
4. The completion of the severance approval process (by deed registration) respecting Parts 2 and 4, Plan 36R-5282, created four lots (Parts 1, 2, 3 and 4, Plan 36-5282) out of Lots 2 and 3, Plan M-262. No lots (e.g., Parts 5, 6, 7, and 8, Plan 36-5282) can be created out of Lots 4 and 5, Plan M-262, because the severance approval process respecting those lots has now lapsed by operation of the *Planning Act* (see 2, above). Lots 4 and 5, Plan M-262 are still in existence.
5. Official Plan policies that relate to development or redevelopment of existing lots on Trout Lake are contained within subsection 2.9.14 of the Official Plan, a copy of which is enclosed for your information. These policies deal specifically with existing lots that do not meet current lot frontage and area requirements and establish criteria for considering minor variances for such lots.

6. Site Plan Control is required for lots fronting on Trout Lake and is triggered by development which requires a building permit.

Specific comments

7. Vacant Existing Lots - Parts 1 and 3, Plan 36R-5282

Neither the frontage nor the area of either of these lots conforms to the existing Zoning By-law. The policies contained within Official Plan subsection 2.9.14 apply specifically to lots fronting on Trout Lake, including these lots. Therefore, in order to build on either of Parts 1 or 3, Plan 36R-5282, frontage and lot area minor variances will be required. The owners will also be required to enter into a Site Plan Control Agreement prior to building permit issuance.

8. Built Existing Lots - Lot 4, Plan M-262 (being Parts 5 and 6, Plan 36R-5282), and Lot 5, Plan M-262 (being Parts 7 and 8, Plan 36R-5282)

The existing single detached dwellings on Lots 4 and 5, Plan M-262, received building permits on the basis that, because neither of the lots had been severed into its constituent parts on Plan 36R-5282, the lots conformed with the existing Zoning By-law requirements (200 foot frontage; two acre lot area). The owner of the dwelling on Part 6, Plan 36R-5282, has the right to sell provided that Part 5, Plan 36R-5282, is included in the sale so to comprise the whole of Lot 4, Plan, M-262. (Similarly, the owner of the dwelling on Part 8, Plan 36R-5282, has the right to sell provided that Part 7, Plan 36R-5282 is included in the sale so to comprise the whole of Lot 5, Plan, M-262.)

9. The owner does not have the right to sell Part 5 independent of Part 6 (or Part 7 independent of Part 8) unless the owner obtains (a) severance approval, and (b) minor variances to recognize the reduced lot frontages and lot areas of both the proposed severed and retained parcels.

Further, assuming severance approval is obtained, and appropriate minor variances granted, before a building permit could be issued for either Part 5 or 7, a deed completing the severance would have to be registered, and a Site Plan Control Agreement entered into by the new owner.

Should you require any further clarification on this matter, please contact David Linkie, the City's Manager of Planning Services, at 474-0400, extension 403. He is prepared to offer you whatever assistance you require.

Yours very truly,



C. M. Timothy Sheffield  
Chief Administrative Officer

cmts:

enclosure

copy for: Managing Director, Community Services  
Managing Director, Corporate Services  
Manager, Planning Services

lake frontage or to 2.5 lots per hectare.

- 2.9.14 Most existing lots or parcels of record with frontage on Trout Lake or on a watercourse flowing into Trout Lake within the rural area do not meet the above standards, and therefore special procedures are required for Council or its designate to deal with applications for Minor Variance.
- 2.9.14.1 When Council or its designates receives an application for Minor Variance, which would result in the development or the redevelopment of an existing lot or parcel of record with frontage on Trout Lake or on a watercourse flowing into Trout Lake, the following special procedures should be followed:
- a) The minimum period for notice of a public meeting to hear the above application shall be 28 days.
  - b) In order to ensure the goals and objectives for the Trout Lake area are met, Council shall consider the comments of the following agencies prior to making a decision on an application:
    - i) Secretary-Manager, North Bay-Mattawa Conservation Authority;
    - ii) District Manager, North Bay District Ministry of Natural Resources;
    - iii) District Officer, North Bay District Ministry of Environment;
    - iv) City Engineer  
City of North Bay;
    - v) Managing Director, Community Services Business Unit, City of North Bay;
  - c) Prior to making a decision on an application for a Minor Variance in the Trout Lake area, members of Council shall endeavour to inspect the site of the proposed development or redevelopment. Inspections should only be carried out

when a full visual and technical assessment can be made, which would preclude periods when snow cover obscures ground conditions.

- 2.9.14.2 A Minor Variance which would result in development or redevelopment on any existing lot or parcel of record should only be approved when at least two of the following five criteria are met:
- a) A minimum frontage of 61 metres;
  - b) a minimum lot area of four-tenths of a hectare (0.4 ha);
  - c) a minimum setback for new habitable buildings and all sub-surface septic systems of 30 metres;
  - d) all habitable buildings are connected to municipal sanitary sewer services, and
  - e) all habitable buildings are incorporated into a mandatory annual septic tank pump out program.

- 2.9.15 All lands not on fully piped sanitary services along the shoreline of Trout Lake to a depth of one lot deep or 46 metres, whichever is greater, and all lands with frontage on a watercourse flowing into Trout Lake as identified by the North Bay-Mattawa Conservation Authority on the schedule to the City of North Bay Fill, Construction, Alteration to Waterways Regulations are designated as a Site Plan Control Area.

When an application is received for the development or redevelopment of a lot or parcel of record within the proposed Site Plan Control Area, the application shall be accompanied by:

- 2.9.15.1 A site plan which shows the location of all existing or proposed buildings, structures, accessory buildings and the sewage disposal system with indication of accurate dimensions and setback distances from lot lines and