

ISSUE DATE:

Feb. 26, 2008



PL070712

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant:	David Johnston
Applicant:	Edward Hood
Subject:	Minor Variance
Property Address/Description:	Part Lot 13, Conc. 13 – 1089 Shady Lane, Twelve Mile Lake
Variance from By-law:	06-10
Municipality:	Township of Minden Hills
OMB Case No.:	PL070712
OMB File No.:	V070350
Municipal File No.:	MV A21/2007

APPEARANCES:

Parties

David Johnston

Edward Hood

Counsel

K. A. Mullin

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. A. SILLS ON
FEBRUARY 12, 2008 AND ORDER OF THE BOARD**

This matter relates to an appeal by Mr. David Johnston (“Appellant”) against the decision by the Committee of Adjustment of Minden Hills which authorized minor variances to property owned by Mr. Edward Hood (“Applicant”) at 1089 Shady Lane.

The Applicant proposes to construct a two-storey garage for boat and car storage which will also include office and loft storage space. The proposed design of the structure includes a hydraulic lift or car elevator to allow for the stacking of two cars, which results in the requirement for relief from Zoning By-law 06-10 to allow for the construction of a two-storey building where only one storey accessory buildings are permitted. Relief is also required to permit a building height of 5.72m where the maximum allowed is 4.5m.

As Mr. Johnston was not represented by legal Counsel and was not presenting any expert witnesses, the Board inquired as to his knowledge of the procedural rules of a hearing. Mr. Johnston told the Board that he had not previously been a Party to an appeal, but that he had participated in a hearing as a witness (Mr. Johnston is an architect). He said he was somewhat familiar with the rules and the process of a hearing.

Mr. Johnston testified that he was appealing this decision for the four reasons outlined in his Appeal Document (Exhibit 1), as follows:

1. The Applicant did not post 'Notice' within the Time Frame as Stipulated by Provincial Statute.
2. The data concerning the areas of the property and the proposed building is not accurate and is misleading. The building proposed is two storeys – it is not a Ground Floor and a Loft Floor. Neither a Ground Floor nor a Loft Floor are defined in the Ontario Building Code nor the Zoning By-Law. The words are not relevant to this type of application. The Applicant asked for a Two Storey Building when only a One Storey Building is permitted (refer to Application). The New Zoning By-Law is still not complete and the Applicant is trying to revise a new By-Law which has already undergone Public Consultation, Comment and Review by means of a Variance. This Application is for a Re-Zoning and not a Variance.
3. The elevations of the proposed building are not accurate, do not correctly reflect the existing site conditions and are misleading. The Applicant is asking for a Two Storey Building. How the structure will be supported is incorrectly shown. This is not a level site.
4. The construction of this building will materially change the nature of Shady Lane from a 'low key cottage area' into an 'over developed area of "Monster Garages" and no trees. With the removal of these trees, I am concerned about the stability of the trees near and surrounding my property.

Mr. Johnston told the Board that this list of concerns is the only submission he intended to make regarding this appeal.

The Board asked Mr. Johnston if he was satisfied that Notice for today's hearing had been properly executed, to which he responded he agreed that it had. The Board then asked Mr. Johnston if he was suggesting that Mr. Hood did not have a legal right to make an application for a minor variance to which he replied "No, of course not".

In an attempt to clarify the issues, the Board advised Mr. Johnston of the matters within the purview of the hearing and this Member and explained that he must be prepared to justify his objections to the approval of the variances in terms of the four tests of Section 45(1) of the *Planning Act*.

Mr. Johnston said he understood the information being provided by the Board Member, but had no other reasons for objecting and no further supporting evidence to put forward that would address the four tests for minor variances.

Mr. Hood told the Board that he purchased the subject property which backs onto Shady Lane, in 2005. He said this property has a frontage of 240 ft. and contains a 75-year old cottage that is built on the shoreline road allowance. Mr. Hood testified that he made an offer to purchase the road allowance and understands that the municipality has agreed to the sale but is awaiting the preparation of the legal documents.

Mr. Hood told the Board that this area, which is designated Waterfront, is a typical cottage area characterized by varying elevations and heavily wooded lots. He said that as-of-right, he would be permitted to construct a one-storey four-door garage, but chose the proposed design in an effort to preserve trees and the existing vegetation. Mr. Hood said that the footprint of the proposed structure covers 57% of the area that would be required for a single storey four-door garage. He told the Board that the specific location selected for the proposed garage was the optimum site as it did not cross the hydro service line and no excavating would be required. He provided the Board with photos of the area and several properties with multi-car garages in the immediate vicinity of his property.

Mr. Hood told the Board, that as a result of building code concerns expressed by Mr. Johnston at the Committee of Adjustment, he had retained a Professional Engineer. He provided a report by Mr. Bryan Kernohan, P. Eng. BDS, who reviewed the design drawings and recommended a foundation design.

Mr. Martin Rendl is a professional planner who gave evidence in support of this application. Mr. Rendl testified that it was his professional opinion that the proposal meets the four tests outlined in section 45(1) of the *Planning Act*.

Mr. Rendl told the Board that the design of the proposed structure gives the appearance of a single storey which does not create shadowing or overview and does not result in a loss of privacy. He said that the proposal satisfies parking and storage requirements and is a “positive approach to the development on the property”. It was his opinion that the proposal was a more appropriate and attractive option than the alternative of a single storey four-door garage.

Mr. Rendl said that the proposal satisfies the general intent and purpose of the Official Plan and Zoning By-law and is desirable for the development of this property. It was his opinion that the proposal does not have an adverse impact on the area or the neighbours and the variances requested are minor.

The Board carefully considered the submissions and evidence presented at the hearing.

The Board finds that, with the exception of the concern related to change in character of the area, the objections of the Appellant do not represent legitimate planning matters that can be adjudicated by the Member.

With respect to Mr. Johnston’s issue related to a change in the nature of the area, the Board was not provided with any factual evidence to support such a concern. In fact, the photos submitted by Mr. Hood portrayed an area with a wide range of structures which vary in size and design. The Board is unable to distinguish a specific character for this area except to conclude that it is cottage country.

Considering the uncontested professional evidence of Mr. Rendl, the Board finds that the appeal is without merit. The Board is satisfied that the requested variances meet the four tests for a minor variance as set out in Section 45(1) of the *Planning Act*.

THE BOARD ORDERS that the appeal is dismissed and the variances to By-law 06-10 are authorized.

So Orders the Board.

"M. A. Sills"

M. A. SILLS
MEMBER