

ISSUE DATE:

July 31, 2008



PL080058

Ontario
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

Applicant and Appellant: Reid J. Wilson
Subject: Minor Variance
Variance from By-law No.: A2000-07
Property Address/Description: Island B952, Being Parcel 881 P.S.S.S.
Municipality: Township of The Archipelago
OMB Case No.: PL080058
OMB File No.: PL080058
Municipal No.: A13/07

APPEARANCES:

Parties

Counsel

Reid Wilson

The Corporation of the Township of
Archipelago

B. Hurley

DECISION DELIVERED BY D. BARBIR AND ORDER OF THE BOARD

The matter before the Board is an appeal by Reid Wilson (the Applicant) from a decision of the Committee of Adjustment that dismissed his application for variance to By-law A2000-07. The variance would reduce a minimum front yard setback in the Costal/Island Residential Zone from 7.5 metres to 4.2 metres, to allow the existing deck attached to the accessory building to remain.

The subject property is a single ownership island B952 located in the Pointe au Baril Neighbourhood in the Township of Archipelago. The Township of the Archipelago consists of 6000 islands and 19 Neighbourhoods. The majority of the properties have only a water access.

The Township of Archipelago's Official Plan (OP) has only one designation, which is "Recreation". The OP recognizes that the built form is to be secondary to the natural character of the area and should not be a dominant form on the landscape.

By-law A2000-07 requires that a deck attached to an accessory building, sleeping cabins are also accessory buildings, shall comply with the front yard requirement for the accessory building. For the subject property required front yard set back is 7.5 metres. The old By-law, which was in force for 27 years, would have allowed the proposed deck.

A key issue in this application is whether or not the intent of the new By-law is maintained or not. Both parties agreed that the deck does not have legal non-conforming status, and is to be considered under By-law A2000-07. The intent of the new By-law is to establish an increased setback for decks attached to accessory buildings to minimize the visual presence of accessory buildings in the area.

Mr. Wilson, the Applicant, stated that his family owned the island for fifty years. The island has an area of 1.6 acres. It is developed with a fifty year old 49 square metres cottage located at the front of the island, a 47 square metres sleeping cabin with an attached deck located at the back of the island, and a 7 square metres shed. The sleeping cabin was constructed very close to the minimum setback of 7.5 metres in 2006. The deck was built, prior to the new by-law being enacted in July of 2007. Mr. Wilson stated that he did not know that the building permit was required. Under cross-examination he stated that he owns a surveyor company and is familiar with the building permit process, and knows how to obtain information required.

Mr. Mason, planner for the Township, who testified under subpoena, stated that the sleeping cabin is an existing structure, constructed under older zone standards. The proposed deck would appear to be consistent with the general built form of the Township for existing structures and maintains the intent of not offending the natural character of the Township's landscape and minimizing built form. The proposal to construct a deck closer to the water's edge would appear to maintain the intent of the By-law. The proposal meets the four tests under the *Planning Act*. Under cross-examination Mr. Mason agreed that the date when the deck was built played a role in his decision to support the application.

Mr. Jackson was of the opinion that the old By-law, which was in force for 27 years, would permit the proposed structure. It is the new zoning by-law that is offended by the deck encroaching on the acquired front yard. Open-air decks have been traditionally allowed in the front yard.

For the variance requested Mr. Jackson reviewed the four tests required under subsection 45(1) of the *Planning Act*, and concluded that the four tests were met.

Mr. Goodried stated that the new By-law has much stricter policies regarding front yard setbacks for decks attached to accessory buildings. The proposal with lower standards than required by the new By-law cannot meet the intent of the By-law. He testified that there are other locations shown in Exhibit 10 where the Applicant can build a deck without variances required, which he explained in detail.

For the variance requested, Mr. Goodried reviewed the four tests required under subsection 45(1) of the *Planning Act*, and concluded that the four tests were not met.

The Board prefers the evidence from Mr. Goodreid and finds that all four tests under the *Planning Act* must be met otherwise the application fails. The Board finds that the intent of the By-law is not met; the application does not meet one of the tests required under section 45(1) of the *Planning Act*. The Board finds that the new By-law has much stricter policies regarding setbacks for decks attached to accessory buildings. The Board finds that the proposal with lower standards than required by the new By-law does not meet the intent of the By-law.

The Board finds that there are other possible locations for the deck, maybe not the Applicant's first choice, but as explained by Mr. Goodreid, very reasonable choices that do not require variances (Exhibit 10).

Based on the foregoing, the appeal is dismissed and the variance requested is not authorized.

The Board so Orders.

"D. Barbir"

D. BARBIR
MEMBER