

ISSUE DATE:

Oct. 08. 2008



PL080718

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:	Bertha Fuller
Applicant:	Dennis & Nancy Pitre
Subject:	Minor Variance
Variance from By-law No.:	28-80
Property Address/Description:	751 Lakeshore Drive
Municipality:	City of North Bay
OMB Case No.:	PL080718
OMB File No.:	PL080718
Municipal No.:	A06-08

APPEARANCES:

Parties

Bertha Fuller

Denis Pitre

DECISION DELIVERED BY J. E. SNIEZEK

Introduction

Denis and Nancy Pitre (the Applicant) applied to vary the existing side yard provision of By-law 28-80 of the City of North Bay that reduces the required yard to 0.30m where the by-law requires 1.8m in order to add a one half-storey addition to the existing building and to square off the front. The Committee of Adjustment authorized the variance. Ms. Bertha Fuller (the Appellant), the neighbour to the south, appealed the decision authorizing the variance to this Board.

The Board heard from Bertha Fuller (the Appellant), Denis Pitre (the Applicant), residents Dawn Myers (743 Lakeshore Drive) Barry Frampton, Deanna Carlbert (751 Lakeshore Drive and Paul Gervais (Chief Building Official of East Ferris and Chisolm Township and witness for the Applicant)

The Board did not have any Planning witness; however, the Board did have the Planning Report from the City of North Bay (Exhibit 6).

Background

The subject property consists of Lots 203 and 222 with a frontage of 33 feet on Lakeshore Drive, with water frontage onto Lake Nipissing and with a depth of 188.67 feet deep on the north side and 190.33 feet on the south side. The development on the lot consists of a garage and a one-storey dwelling. The Official Plan for the City of North Bay designates the subject lands as "Residential" and Zoning By-law 28-80 zones the lands Residential Second Density (R2). The area of the lot is 0.0567 hectares (0.33 acres).

The comparison of the two surveys (Exhibits 2 and 10) indicate that Mr. Pitre enlarged the existing garage by 6.75 feet and moved the garage closer to Ms. Fuller's property (between 7.19" and 6.18"). The northerly side yard according to Mr Pitre's survey (Exhibit 10) is between 1.56 and 1.51 feet. The side yard on the southerly side yard is 1.33 feet on the westerly corner of the house and 1.19 feet on the easterly corner of the house. Ms. Fuller's survey (Exhibit 2) indicates a southerly side yard of 1.56' vs. 1.33' on the westerly corner and 1.099 feet vs. 1.19 feet on the easterly corner of the house. The difference on the westerly side yard is significant because no new construction has occurred on that corner of the house. The difference on the easterly corner of a tenth of a foot can be explained by the new siding. A review of the surveyors' notes may be able to deal with the difference and should be consulted by the City before issuing any building permits.

The Position of the Appellant and Residents

The concerns of the Appellant and the residents relate to the past behaviour of the Applicants relating to the lack of building permits for the addition to the existing house that added to windows to the south wall of the building. The Applicant enlarged his non-complying garage beyond the existing footprint and constructed improvements to the shoreline abutting Lake Nipissing. The Applicant also set fires on the beach in contravention with local regulations. The plans submitted by the Applicant were not to scale and would appear to project over the lot line. The windows that are proposed for the roof dormers would be within 0.3 m of the lot line and require special fire dampers.

The residents and the Appellant expressed concern with the type of electrical service to the dwelling and questioned its safety. There are differences between the survey of the Applicant and the Appellant as noted above.

The Position of the Applicant

The Applicant indicated that the plans were preliminary in nature and that the new structure would not encroach onto Ms. Fuller's property. The intent of the variance is to make a modest expansion to the existing dwelling that is not out of character with homes in the area. The Applicant asserts that the proposed addition meets the general intent and purpose of both the official plan and zoning by-law; is minor, and is desirable and appropriate. The Applicant states that the building has a 125 Amp electrical service not the 60 Amp service alleged by the Appellant and the residents.

The Planning Case

The only planning evidence before the Board is the written report of Steve McArthur, Senior Planner, Current Operations, City of North Bay (Exhibit 6). In his report Mr. McArthur summarizes his findings as follows:

The original application was deferred by the Committee of Adjustment at the hearing on Wednesday, April 16, 2008. The Applicant revised the proposal after the deferral by the Committee. The Applicant had discussions with Planning Staff regarding the necessary revisions to address the neighbours' concerns: In this regard the Applicant has: decreased the size of the addition from two (2) full stories to a storey and a half; removed a proposed wrap-around balcony; altered the proposal such that the required setback will be met on north side lot line; and the construction of dormers and the half storey addition toward the south side yard.

The minor variance was re-circulated on April 29th, 2008. To date there have been no objections received from any of the circulated property owners regarding this new proposal.

The addition of the proposed half storey with dormers is in character with the rest of the neighbourhood. There are many examples of this type of construction (single family dwellings on small lots with a maximum height of a storey and a half) along Lake Nipissing shoreline in the City of North Bay.

The new proposal will also permit the Applicant to increase the height and still meet the required setback on the south side of the property by a half storey addition.

The Applicant has reconsidered the original proposal and has applied for a variance that is reasonable and in character with the rest of the neighbourhood. It is my professional opinion that the variance is minor, it is desirable for the appropriate development and use of the land, and the general intent and purpose of the City of North Bay's Official Plan and Zoning By-law 28-80 are maintained and the end use is consistent with Provincial Policy as set out in PPS 2005

Findings

The Board finds that based upon the written report of the City of North Bay (that was uncontested by the Appellant and the residents that appeared in support of the appeal), that the variance meets the tests in Section 45(1) of the *Planning Act* namely that: it meets the general intent and purpose of the Official Plan and the Zoning By-law; it is minor; and it is desirable and appropriate for the development of the land.

The concerns of the Appellant and the neighbours focus on issues of life safety that are contained in the Ontario Building Code. The matters of fire separation must be addressed prior to the issuance of a building permit that must conform to the Ontario Building Code. The Board trusts that the Chief Building Official will not issue a permit that contravenes the OBC or the Zoning By-law. The Board is satisfied that proper plans will be prepared and inspections completed.

The Appeal is dismissed and the variance to By-law 28-80 of the City of North Bay is authorized.

"J. E. Sniezek"

J. E. SNIEZEK
MEMBER