

ISSUE DATE:

January 31, 2012



PL101359

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:	Kathleen Hamilton
Subject:	Minor Variance
Variance from By-law No.:	28-80
Property Address/Description:	1300S Four Mile Lake Rd
Municipality:	City of North Bay
Municipal File No.:	A-06-09
OMB Case No.:	PL101359
OMB File No.:	PL101359

APPEARANCES:

Parties

Kathleen Hamilton and Duane Feltz

City of North Bay

Counsel

G.D. Olah

M.B. Burke

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. G. WONG ON
SEPTEMBER 15, 2011 AND ORDER OF THE BOARD**

Kathleen Hamilton and Duane Feltz (Applicants) are appealing a decision of the City of North Bay Committee of Adjustment (COA) File No. A-06-09 refusing minor variances to legalize an unauthorized development at 1300S Four Mile Lake (Subject Property). The property is located in a rural area of residential cottages approximately 15 kilometres northeast of the downtown.

At the outset of the hearing, Mr. Burke, counsel for the City, advised the Board that a settlement has been reached. As a result of the settlement, some of the original variances are no longer required because the Applicant has purchased additional lands from the abutting neighbour to add to the subject lot. A 200 square metre triangle-shaped parcel is being added on to the northeast corner of the Subject Property.

As result of the adding 200 square metres onto to the subject lands, the total number of variances has been reduced from seven (7) to five (5). The original variances for lot coverage and rear setback are now redundant. Pursuant to subsection 45(18.1) of the *Planning Act*, the application is amended and having regard to subsection 45(18.1.1) of the *Planning Act*, the Board finds in this instance that the amendments to the original application to be minor as they represent a decrease in the number of variances (now 5 instead of 7) and a reduced magnitude for some of the remaining variances as compared to the original application. No further notice will be given.

The Applicants request the following “revised” variances to the City of North Bay By-law 28-80:

- a) A reduction in the minimum lot area from 0.4 ha to 0.0921 ha;
- b) A reduction in the minimum lot frontage from 61 m to 30.5 m;
- c) A reduction in the minimum front yard setback from 30 m to 8.08 m;
- d) A reduction in the minimum interior side yard (east side) from 6 m to 1.46 m; and
- e) A reduction in the minimum shoreline setback for the Class 5 sewage disposal system from 30 m to 18 m.

Beverley Hillier, a qualified land-use planner and the Manager of Planning Services for the City, testified in support of the settlement. According to Ms Hillier, subsection 2.10.14.4 of the City’s Official Plan (OP) allows for the consideration of a minor variance application when the Applicant is unable to meet the requirements in subsection 2.10.14.2, where the redevelopment of an existing lot of record results in a net improvement to water quality. Net improvement to water quality can be demonstrated to the City’s satisfaction using expert studies.

Ms Hillier testified that the Subject Property is an existing undersized, irregular shaped lot of record. Lots of this size are not uncommon in this area and the variances being sought reflect this. The size and shape of the subject lot size has been improved by the acquisition of 200 square metres from the neighbouring property.

Ms Hillier testified the minimum front yard variance is simply recognizing the existing condition for a lot of record. However, the front yard setback is being increased from 7.6 metres to 8.08 metres as the result of the removal of an existing bay window as part of the settlement agreement. This is an improvement over the original variance. In addition, the settlement includes a new shoreline vegetative buffer that consists of specific plantings.

In terms of the east side - interior side yard setback, Ms Hillier testified this is an existing undersized lot and the variance merely recognizes the existing cottage location. She indicates that the neighbouring property to the east is separated from the Applicant's by a 35-meter wide vegetative buffer that also includes a creek.

In terms of a reduced lot frontage, Ms Hillier testified it is not possible in this case to add frontage because the lot next door is developed. However, reinstating the front vegetative buffer is an improvement over the existing condition so it better meets the requirements than the current situation. In this instance, the improvement can be considered as meeting the general intent of the ZBL.

According to Ms Hillier, the intent of the OP is to protect the water quality and to service the property. In terms of the minimum shoreline setback for a sewage disposal system, the Ontario Building Code requirement is only 15 metres and the variance here is for 18 metres. The Applicant is proposing a new sewage system that includes a holding tank and the Site Plan Control Agreement (Exhibit 2) includes provisions for its ongoing operation and maintenance of this system. This new sewage system with a holding tank is an upgrade from a standard septic system. According to Ms Hillier, with a holding tank system, there is no phosphorus leaching as compared to a typical Class 4 septic system and improving the water quality and so it meets the intent and purpose of the OP.

In Ms Hillier's opinion, the proposed settlement includes conditions (Exhibit 2) that satisfy all the requirements of the City, and other agency requirements including the Conservation authority. This settlement was focused on improving the existing conditions. The acquisition of additional land has allowed the Applicants to meet the rear yard and lot coverage requirements and an upgraded sewage system that better protects the environment and improves water quality is desirable.

Glenn Tunnock, a qualified planner retained by Applicant, testified that he agrees with the testimony of Ms Hillier. According to Mr. Tunnock, with a holding tank sewage system there is no discharge into the lake and no compromise to water quality. The proposed vegetative buffer together with the site plan control agreement will help to reinvigorate the shoreline.

Counsel for City submits that the settlement addresses all the issues that would have been required prior to the construction and the Applicants/owners will end up incurring all the same costs. The objective for the Parties was to work towards improving the existing situation.

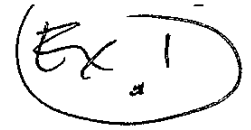
In this instance, based on the settlement between the Parties, the submissions of counsel, and the uncontradicted land-use planning evidence and opinions of Ms Hillier and Mr. Tunnock (as described earlier in this decision), the Board is satisfied that the proposed variances meets the tests in subsection 45(1) of the *Planning Act*, are in the public interest and represents good planning.

THE BOARD ORDERS that the appeal is allowed and the “revised” variance to City of North Bay By-law 28-80, as amended, are authorized subject to the terms and conditions contained in Exhibit 1 - Minutes of Settlement (Attachment “1”).

This is the Order of the Board.

“J.G. Wong”

J.G. WONG
MEMBER


ATTACHMENT "1"**Minutes of Settlement**

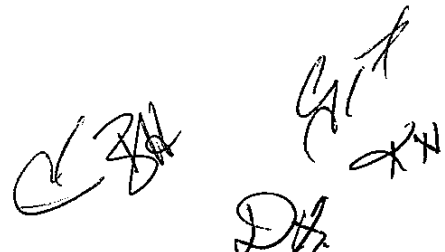
IN THE MATTER of an appeal by Kathleen Hamilton under subsection 45 (12) of the Planning Act, R.S.O., c. P.13, as amended against a decision of the Committee of Adjustment of the City of North Bay re: File A-06/09 respecting minor variances.

WHEREAS the parties to this matter have considered the minutes of settlement and concur therewith;

NOW THEREFORE the parties to this settlement petition the Board to, upon receipt of a certificate from the City that the conditions herein have been met, issue an Order allowing for a partial appeal as set out in the minutes of settlement hereto:

THE PARTIES HERETO AGREE AS FOLLOWS:

1. That this settlement applies to lands described as Part of Lot 12, Concession 2, geographic Township of Widdifield, now in the City of North Bay, District of Nipissing and known by the civic address as 1300S Four Mile Lake Road, as shown on Schedule A.
2. That the Corporation of the City of North Bay agrees, given the lot addition referred to herein, to the following minor variances to By-law 28-80:
 - a) A reduction in the minimum lot area from 0.4 ha to 0.0921 ha;
 - b) A reduction in the minimum lot frontage from 61 m to 30.5 m;
 - c) A reduction in the minimum front yard setback from 30 m to 8.08 m;
 - d) A reduction in the minimum interior side yard (east side) from 6 m to 1.46 m;
and
 - e) A reduction in the minimum shoreline setback for the Class 5 sewage disposal system from 30 m to 18 m. 
3. That the Corporation of the City of North Bay agrees that minor variances are not required for the following matters:
 - a) A reduction to the minimum rear yard setback subject to clause 6 of the Minutes of Settlement; and
 - b) An increase to the maximum lot coverage subject to clause 6. of the Minutes of Settlement.



4. That the Owner agrees to enter into the attached site plan control agreement with the Corporation of the City of North Bay that shall set out the details of site development for the following matters:

- a) The implementation of a revegetation and planting program as more particularly set out in a report prepared by FRi Ecological Services, August 2011 and described as follows:

"The Owner covenants and agrees to undertake a revegetation and replanting program along the shoreline and to a 15 m wide buffer measured from the water's edge and more particularly described as follows:

The existing trees will be maintained in a 15m wide buffer measured from the waters edge. The addition of native shrub and tree species within the buffer area shown in Schedule A will improve nutrient exchange and soil binding functions and will to the greatest extent re-establish a viable and naturalized shoreline. Dense vegetation attenuates stormwater, provides coarse filtration and uptake of excess nutrients thus improving local water quality. The trees and shrubs will be planted at a density of one per 4 square metres. To achieve this density, approximately 75 shrubs should be planted that are no less than 30cm in height and can be containerized or bare root stock. The following is a suggested list of plant stock and any combination of these species would be acceptable: ✓

- Eastern white cedar
- sweet gale
- mountain holly
- serviceberry
- red-osier dogwood (*Cornus stolonifera*)
- red maple
- sandbar willow (*Salix exigua*)
- winterberry (*Ilex verticillata*)"

The Owner agrees to remove the hard surface interlocking brick and patio stone within the 15 metre revegetation and replanting area shown on Schedule A.

The Owner agrees to complete the revegetation and replanting program within one year of this agreement, and that the said program shall be completed to the satisfaction of the Managing Director of Community Services.

The Owner agrees to file with the City and renew as required an irrevocable Letter of Credit from a chartered bank or trust company of Canada acceptable to the City Solicitor in the amount of \$5,000.00 as

security for costs of undertaking the said revegetation and replanting program, said sum shall be reimbursed to the Owner upon satisfactory completion of the said revegetation program.

- b) Shoreline protection measures associated with the Trout Lake Watershed as modified for Four Mile Lake and which reflect the location of the dwelling on the subject lands and the respective variances thereto and which contain the following conditions:
- That there shall be no use of phosphate detergents;
 - That no lawn fertilizers containing phosphorus or phosphate shall be used within 50 m of the shoreline of Four Mile Lake; and
 - That there shall be no use of pressure treated lumber or creosote lumber within 10 m of the high water mark of Four Mile Lake.
5. That the Owner shall remove and replace the bay window on the lake side of the dwelling with a window and foundation that is flush with the front building line and building foundation, respectively.
6. That the Owner shall apply to the Committee of Adjustment of the City of North Bay for a lot addition to add to the subject land an additional lot area of 238.2 m²±, as shown on the attached Schedule B, such that the additional land will achieve the following:
- a) Remove the requirement for a minor variance to the rear yard setback;
 - b) Remove the requirement for a variance to the lot coverage; and
 - c) Fulfill the requirement of the North Bay-Mattawa Conservation Authority that the Class V sewage disposal system be located entirely within the boundaries of the property owned by the property owner.
7. That the intent of clauses 5 and 6 is to mitigate outstanding issues and both parties hereby agree that due process to obtain the lot addition shall take place with the reasonable co-operation of the signatories to these minutes of settlement.
8. That the Owner agrees to execute an offer of purchase and sale to acquire the said lot addition and fulfill any associated conditions of provisional consent as may be set out in the Notice of Decision of the Committee of Adjustment under the Planning Act.
9. That the Owner agrees to apply for and obtain permits from the North Bay-Mattawa Conservation Authority (the "Conservation Authority" herein) with respect to the following two matters:

- a) Development, Interference with Wetlands & Alterations to Shorelines & Watercourses (DIA) Permit (which also addresses flood plain management, based on the elevations shown on Schedule A hereto);
 - b) An amendment to Septic System Permit 40/NB/04, by way of letter to Robert Palin, Manager, On Site Sewage System Program which indicates that the holding tank is now wholly contained on the property, accompanied by a sketch. This letter shall also include a letter from a licensed sewage hauler stating that they will pump out the holding tank when necessary.
- 10.1 That the Owner covenants and agrees to operate and maintain a Class V sewage disposal system (the "Holding Tank" herein) in accordance with the requirements of Section 8.8.2.1 of the Ontario Building Code including but not limited to the foregoing:
- a) Maintaining a contract with a licensed hauled sewage system contractor for the regular pump-out of the holding tank;
 - b) The maintenance and operation of an audible and visual warning alarm system suitable to provide advance warning to the building occupants that the sewage system is nearing capacity;
 - c) Maintaining a contract for an acceptable response time by a licensed hauled sewage system contractor in the advent of the warning system indicating the need for a pump-out.
- 10.2 The Owner hereby authorizes the City or the Conservation Authority to enter onto the lands without notice to investigate any complaint as to the proper operation of the Holding Tank
- 10.3 In the event a complaint is not remedied within 24 hours notice to the last assessed owner by electronic notice and by posting on the house, then the City or the Conservation Authority are hereby authorized to immediately carry out such work or pumpouts as are required in the sole discretion of the City or the Conservation Authority and the cost thereof shall be added to the tax roll for the subject lands and collected in like manner as municipal taxes.
11. That the Owner agrees that no grading or alteration or elevation or contour of the land and no additional shed or structures of any kind shall be permitted without the prior written permission of the City Zoning Administrator, or the Conservation Authority, whichever has jurisdiction.
- 12.1 That the Owner agrees to submit as-built drawings of the dwelling prepared by an independent qualified professional for the purposes of satisfying the requirements of the Building Code Act and associated regulation, the Ontario Building Code to

authorize a building permit to be issued and complied with for a single family dwelling.

12.2 The Owner authorizes the City to carry out such inspections, excavations and destructive testing under the direction of the City's Chief Building Official, Shawn Killins, as may be required to demonstrate compliance with the building permit and the Ontario Building Code, which may include the following work:

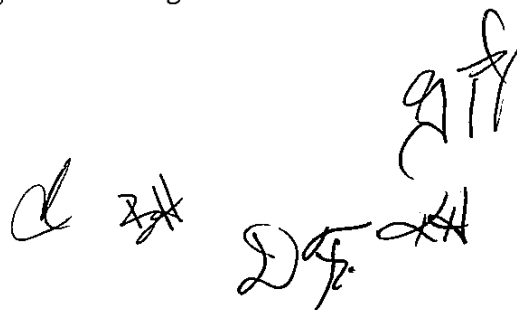
- a) Foundation: excavation of two (2) locations of the foundation in the order of up to 20 feet in width each
- b) First Floor:
 - i) Inspection or exposure of the subfloor system
 - ii) exposure of the insulation and vapour barrier and ceiling system
- c) Second Floor: Inspection or exposure of the subfloor system and the ceiling system
- d) Attic: Inspection or exposure of the roof system
- e) Plumbing – pressure testing of the plumbing, subject to 12.4
- f) Electrical – as required, or by way of a Certificate of Compliance from the applicable Electrical Authority.

12.3 The Owner agrees to carry out such work as may be required for the building to comply with the building permit and the Ontario Building Code.

12.4 In the event that the inspection of the foundation finds that the foundation system does not comply with the building permit or the Ontario Building Code and in the event that the Owner is unable to carry out sufficient reinforcement to demonstrate compliance or is unable to have a qualified professional engineer certify compliance of the foundation system to the building permit and the Ontario Building Code; then the Owner shall rebuild the foundation of the building so as to be at least 8.5 meters from the shoreline of Four Mile Lake, being the front yard setback of the original cottage.

13. That the appeal of Kathleen Hamilton is allowed in part in accordance with the terms hereinabove stated.

14. The Owners acknowledge having received independent legal advice on the terms of the settlement and hereby waive any and all rights to challenge the terms of this Agreement.



THIS AGREEMENT shall inure to the benefit of and be binding upon each of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the following dates:

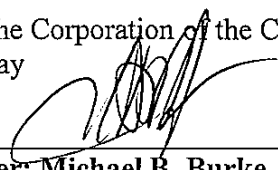
By the Appellant on the 15th day of September 2011.


By the Corporation of the City of North Bay on the 15th day of Sept 2011.





By the owner of the lands subject to this appeal on the 15th day of September 2011.

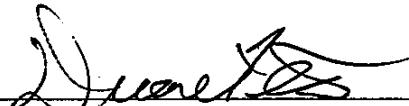
SIGNED, SEALED AND DELIVERED
in the presence of

The Corporation of the City of North Bay


Per: Michael B. Burke,
Corporate Counsel


Per: Beverley Hillier, MCIP, RPP
Manager, Planning Services




Duane Laverne Feltz (Owner)


Kathleen Marie Hamilton (Owner)

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SCHEDULE A

AMENDED SKETCH FOR CONSENT AND MINOR VARIANCE
PART OF LOT 12
CONCESSION 2
TOWNSHIP OF WIDDIFIELD
NOW IN THE
CITY OF NORTH BAY
DISTRICT OF NIPISSING

0 5 10m

SCALE 1 : 250

Miller & Urso Surveying Inc.

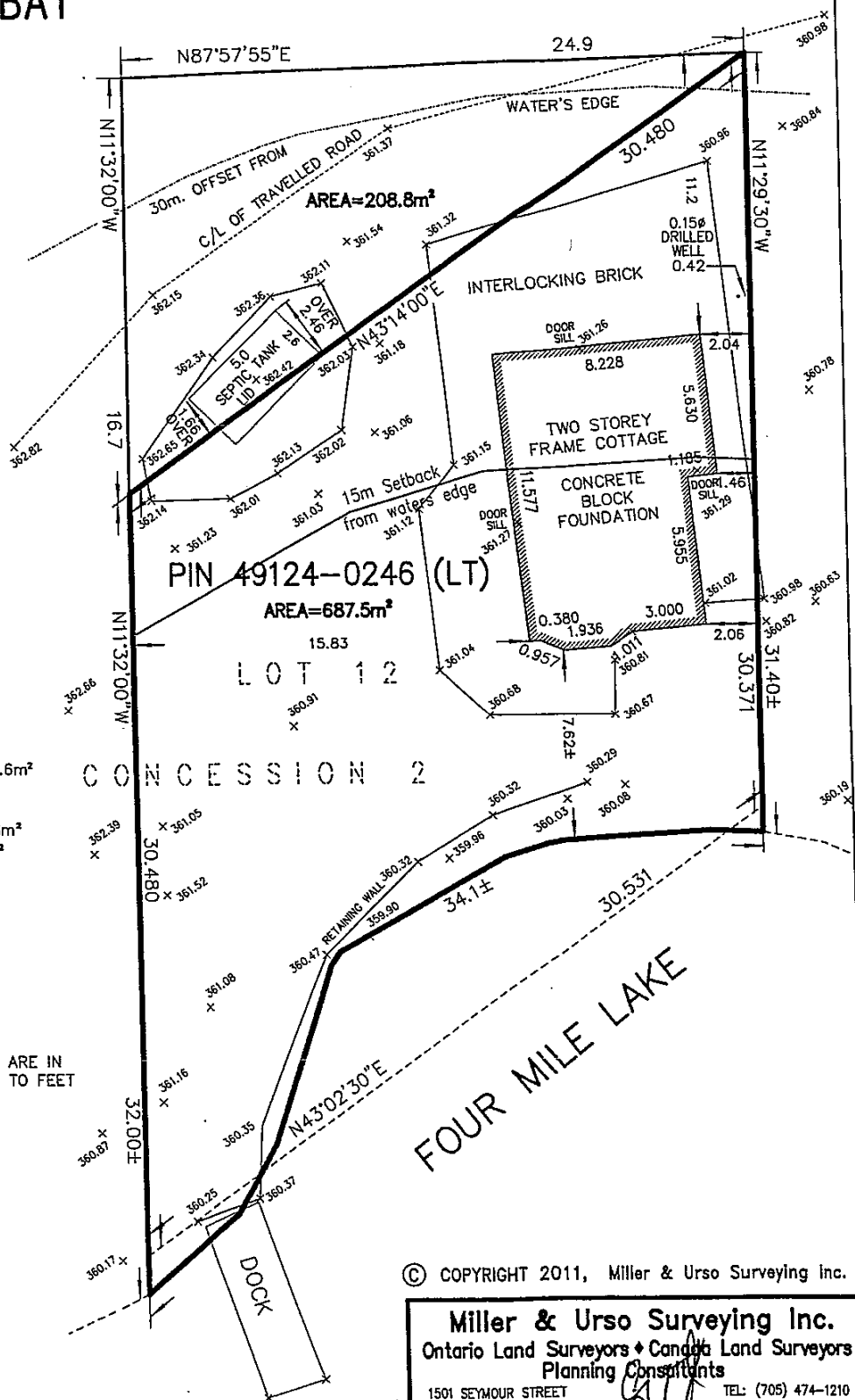
LOT COVERAGE

AREA OF LOT = 687.5m²
AREA OF EXISTING COTTAGE = 89.6m²
LOT COVERAGE = 13.03%

AREA OF LOT ADDITION = 208.8m²
NEW AREA OF LOT = 896.3m²
NEW LOT COVERAGE = 10.0%

METRIC

DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.



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Miller & Urso Surveying Inc.
Ontario Land Surveyors • Canada Land Surveyors
Planning Consultants

1501 SEYMOUR STREET
NORTH BAY ONT, P1B 8G4

TEL: (705) 474-1210
FAX: (705) 474-1783

AMENDED SKETCH FOR CONSENT & MINOR VARIANCE
PART OF LOT 12
CONCESSION 2
TOWNSHIP OF WIDDIFIELD
NOW IN THE
CITY OF NORTH BAY
DISTRICT OF NIPISSING

0 5 10m

SCALE 1 : 250

Miller & Urso Surveying Inc.

METRIC

DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

LOT COVERAGE

AREA OF LOT = $637.5\pi^2$

AREA OF EXISTING COTTAGE = 89.6 m^2

EXISTING LOT COVERAGE = 13.03%

AREA OF LOT ADDITION = 208.8m^2

NEW AREA OF LOT = 896.3m²

PROPOSED LOT COVERAGE = 10%

Area of Land to be
acquired for Lot Addition:

To include additional one (1) met
of land (shown as hatched)

one (1) metre

FROM THE LAKE

208.8 m²

0.15p
DRILLED
WELL
0.42-

11577 TWO STOREY
FRAME COTTAGE
CONCRETE
BLOCK
FOUNDATION

PIN 49124-0246 (LT)

687.5 m²

C O N F E S S I O N 2

FOUR MILE LAKE

DOCK

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NORTH BAY ONT. P1B 8G4

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