

ISSUE DATE:

March 28, 2013



PL111068

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: Donald/Cherrie Dent
Subject: Minor Variance
Variance from By-law No: 20-80
Property Address: 1190 Regina Street
Municipality: City of North Bay
Municipal File No: A-30-10
OMB Case No: PL111068
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APPEARANCES:

Parties

Donald/Cherrie Dent

City of North Bay

Counsel

F. Falconi

P. Leckie

DECISION DELIVERED BY BLAIR S. TAYLOR

INTRODUCTION

[1] On February 14, 2013, the Board heard the appeal of Donald and Cherrie Dent (hereinafter the "Owners") from the dismissal of a minor variance application by the Committee of Adjustment for the City of North Bay, concerning the property known municipally as 1190 Regina Street (hereinafter the "Subject Lands"). A minor variance application had been filed with the Committee of Adjustment for an existing private garage, seeking relief from three provisions of the Zoning By-law: firstly to increase the maximum lot coverage for an accessory building from 10% to 10.5%; secondly to increase the maximum height for an accessory building from 4.1 m to 6.7 m, and thirdly to vary the number of storeys permitted for an accessory building from one to two.

SUBJECT LANDS

[2] The property known as 1190 Regina Street is legally described as part of Lots 62, 63, and 64 on Registered Plan 81. It is a corner lot at the intersection of Regina Street and York Street, with 13.425 m. of frontage on York Street and a depth of 37.805 m. on Regina Street. The lot is rectangular in shape. There is a single storey detached dwelling located toward the intersection, and then moving westerly, an attached wooden deck, an attached carport with wooden deck above, with external stairs leading to a second storey of the attached garage. Vehicular access to the garage is directly from Regina Street.

THE NEIGHBOURHOOD

[3] The immediate neighbourhood of the Subject Lands is comprised of detached residential dwellings laid out on a traditional grid. The wider neighbourhood is residential to the west and south, but further east and north there is evidence of mixed use with residential tapering to commercial and light industrial uses closer to major roadways.

OFFICIAL PLAN

[4] The Official Plan designates the Subject Lands as Residential. The parties agree that there is no issue with regard to the Official Plan.

ZONING BY-LAW

[5] The Zoning By-law zones the Subject Lands as Residential Third Density (R3), which allows detached dwellings and accessory buildings.

[6] There are a number of zoning provisions at issue and the Board notes the following provisions:

Accessory Buildings, Uses or Structures

- 3.25 Accessory buildings, uses or structures are permitted in any yard, in any zone, subject to the provisions of this By-law for the particular zone in which said building, use or structure is located, and subject to the following provisions applying to each such accessory building, use or structure:

- 3.25.1 It shall not be used for human habitation, except where a dwelling is a permitted accessory use.
- 3.25.3 In the rear it shall not be built closer than sixty-one (61) centimetres to the rear or side lot lines.
- 3.25.4 It shall not exceed ten (10) percent coverage of the total lot area, and shall not exceed one storey or four and one tenths (4.1) metres in height, whichever is lesser.
- 3.25.5 It shall not be built within one and two-tenths (1.2) metres of the main building.
- 3.25.6 It shall not be considered an accessory building or structure if attached to the main building in any way.

[7] From Section 2 of the Zoning By-law come the following definitions that are relevant to this matter:

Accessory means a use, building or structure that is detached from the main building and is naturally and normally incidental, subordinate and exclusively devoted to the principal use, building or structure and located on the same lot therewith...

Garage, private means an accessory building either separate from or attached to the main building, which is designed or used for the storage of one or more private vehicles and the storage of household equipment, incidental to residential occupancy.

Height of building means the vertical distance measured from the established grade level to the higher of the highest point of a flat roof or the mean level between the eaves and the ridge of a pitched roof exclusive of any accessory roof constructions such as a chimney, steeple or antenna....

Lot Coverage means that percentage of lot area covered by all buildings, main and accessory, above ground level and, for the purpose of this paragraph, the lot coverage in each zone applies and shall be deemed to apply only to that portion of said lot that is located within said zone...

Storey means the portion of a building, other than a basement or cellar, between the surface of any floor and the surface of the floor next above, or, if there is no floor above it, that portion between the surface of such floor and the ceiling above it.

BACKGROUND AND CONTEXT

[8] From the Board's perspective a number of the issues presented in this case arise out of events dating from 1989.

[9] In 1989 a previous owner of the Subject Lands made application to the City of North Bay (hereinafter the "City") for a building permit for a new private garage. The building permit application notes that there was an existing garage of 22' x 26' on the

Subject Lands and that the then owner proposed to build at his own labour a new garage of 22' x 26'. Attached to the building permit application were six (6) drawings by hand depicting the location and design detail of the proposed garage.

[10] A building permit was issued on June 1, 1989, and part of the permit states the following: ... "Issued in accordance with the provisions of the Ontario Building Code and Building By-Laws applicable in the City of North Bay. Conditions on permit: As noted on permit."

[11] The first drawing attached to the building permit has the stamp of the City of North Bay on it. The drawing contains two notations: first relating to the setbacks for the garage that the two foot setback on the rear and internal side yard was... "the minimum setback (blank walls)". The second notation was the following: "Proposed one storey detached garage approved in accordance with N. Bay Zoning By-Law", and signed off by a City of North Bay official.

[12] The third drawing in the building permit depicts the vertical elevation of the garage and gambrel roof: 22 ft. wide and 23 ft. high to the peak. Noted on the drawing is an arrow pointing to the area beneath the gambrel roof with the notation: "Storage Use Only". There is no indication of the author of that notation.

THE HEARING

[13] There were two witnesses for the Owners: the first being Donald Dent and the second a land use planner. The City called one witness: its Manager of Planning Services.

[14] Mr. Dent testified that the property had been purchased in 2000 and that the garage had a second storey in it at that time.

[15] He produced the letter from his solicitor dated July 5, 2000 reporting on the closing of the purchase of the Subject Lands.

[16] The said letter states in part:

A survey from H.S. Wilde dated January 19, 1985, showing the location of the buildings and other structures on the property was obtained, a copy of which is

enclosed herein. Title to this property is subject to the accuracy of the enclosed survey.

[17] He also produced a photocopy of a family photo he stated was taken in 2006 showing someone playing billiards on a billiard table on the second storey of the garage. He provided another photocopy of an undated photo he advised was taken at the time of his purchase which showed two windows facing east on the upper storey, and a covered over doorway on the upper level.

[18] Mr. Dent was most forthright in advising the Board that he had made a number of changes to the garage without a building permit. This led to charges from the municipality, ultimately to a conviction and penalty, and a requirement to obtain a building permit and to bring the garage into compliance with the City of North Bay's Zoning By-law.

[19] Mr. Dent provided additional undated photocopies of photos of the current status of the garage showing the new roof and wall shape at the upper level, and the roof extension over the carport area and deck.

[20] In summary it would appear that Mr. Dent has raised the upper level exterior walls to eight feet high, and has installed a more traditional hip roof with three skylights over the upper level, and two more over the attached deck. Other improvements to the second storey include: insulation, gas heat, a three piece washroom, a picture window on the upper level facing the street, windows on the rear and internal side yards, a window for the three piece bathroom, a double set of doors leading to the upper deck area with the hot tub, and an external stairway leading to the upper deck, and the second storey of the garage.

[21] It was Mr. Dent's evidence that the second storey was in the garage when the Subject Lands were acquired in 2000, and that he had simply retained the building footprint and replaced a gambrel roof with a hip roof.

[22] He told the Board that he used the second level as a recreation room and it had a billiards table, bar, projection TV, and that the three piece washroom was to enable showering after using the hot tub.

[23] He had consulted all his neighbours about his minor variance and no one had any objection to what he had built.

[24] In preparation for the hearing he had obtained a new survey showing the property as of October 15, 2012 and he advised that there had been no changes since that survey had been completed.

[25] He had also taken some pictures of other properties in North Bay that to his mind had garages of similar style and height and stated that he was agreeable to entering into an agreement with the City not to use the second storey for human habitation.

[26] Finally in order to comply with other sections of the Zoning By-law he was agreeable to remove the windows in the upper level in the rear and side yards, to remove the window from the three piece washroom, and to remove part of the existing wooden deck (so that the garage was no longer attached to the dwelling), as conditions of approval if required by the Board.

[27] The Board then heard from Glenn Tunnock who was qualified as a land use planner.

[28] Mr. Tunnock had been retained on February 11, 2013. Prior to his retainer he had reviewed the City's Official Plan and Zoning By-law, reviewed the documentation in Exhibit 1 and especially the materials relating to the 1989 building permit.

[29] Mr. Tunnock testified that since the City had issued the 1989 building permit and that since the garage footprint had not changed, that the first variance sought for increased lot coverage of 10.5% was not necessary and he would provide no evidence in that regard.

[30] With regard to the third variance requested for the second storey, Mr. Tunnock opined that the 1989 building permit had allowed a second storey and therefore the third variance was not necessary, as the second storey was an existing non complying situation authorized by the building permit issued by the City. Therefore he would provide no evidence on the third variance.

[31] Thus Mr. Tunnock focused on the second variance for height.

[32] He testified that in effect what the Owners had done was simply to remove the gambrel roof approved in 1989 and replace it with the hip roof. From a functional perspective he stated that the second storey remains the same as in 1989.

[33] With regard to height, he noted that the Zoning By-law allowed dwellings in the R3 zone to have a maximum height of 2.5 storeys and had the garage been a dwelling, no variance would be required. He also noted that the garage is located within a zone where all the surrounding main buildings could be 2.5 storeys in height.

[34] Mr. Tunnock indicated that the Zoning By-law allowed for different kinds of roofs, and analogized that the Owners had chosen to replace a “bowler” hat roof with a “top hat” roof. In his opinion the clear intent and purpose of the Zoning By-law was to allow home owners that freedom of choice with regard to the shape and design of the roof.

[35] He then took the Board to the definition of height and how it is measured for a gambrel roof and a hip roof. In essence a gambrel roof (shaped like a barn roof) sits lower due to the sloped roof whereas the hip roof sits on top of the supporting walls.

[36] With regard to the height of the roof, Mr. Tunnock testified as the appropriate calculation for the height of a gambrel roof. The Zoning By-law required the mean level between the eaves and the ridge of the pitched roof. He took the Board to Exhibit 1, Tab 3 and one of the drawings from the 1989 building permit. His calculation of height for the gambrel roof (in 1989) was measured from the break in the roof at 16 ft. (16') to the ridge at 18 ft., and thus the mean was 17 ft. Converted to metric, the height approved in 1989 was 5.1816 m. This he contrasted to the existing height of 6.7 m (22 ft.) and stated that there was only an “effective difference” of .6 m or 2 ft.

[37] Thus in his opinion there was no adverse impact as a result of the height of the roof as there was no shadow impact, and by his calculation the 0.6 m effective height difference was minimal.

[38] With regard to the four tests for the variance for height alone, (the other variances being unnecessary to address because of the 1989 building permit), Mr. Tunnock found that the application complied with the general intent and purpose of the Official Plan, and that this had not been disputed by the City. With regard to the general intent and purpose of the Zoning By-law, he stated that the by-law allowed for different

architectural roof styles to be used, and that the hip roof was a roof style that met the intent of the by-law. With regard to the third test of being desirable for the appropriate development or use of the land, it was his opinion that the land use was established in 1989, that the garage is a conventional use in any residential neighbourhood, that it had been desirable for the Owner to modernize the building, and that the resulting reconstruction was an improvement as it constituted an upgrade from the previous building. Finally with regard to the fourth test of minor, he indicated that it is not appropriate to take a mathematical approach to the variance. He stated that a passer-by would see a more conventional roof and that there had been neither adverse impacts noted nor any objections from neighbours. Therefore he opined that the four tests of s. 45(1) had been met and that the minor variance application represented good planning and recommended approval to the Board, subject to the conditions of approval mentioned in evidence by Mr. Dent.

[39] The City called its only witness Beverley Hillier who is currently the Manager of Planning Service at the City and has been employed by the City in various planning capacities since 2001.

[40] Ms. Hillier pointed out to the Board that the minor variance application referenced in the Owner's materials (Exhibit 1, Tab 10) and Mr. Tunnock's witness statement had been rejected by the City and that a revised minor variance application had been filed with the City dated September 24, 2010 (See Exhibit 4, Tab 2).

[41] Ms. Hillier disagreed with the methodology advanced by Mr. Tunnock with regard to the calculation of height for a gambrel roof. Using the same drawing referenced by Mr. Tunnock, Ms. Hillier advised that the definition for "height" required a mean measurement from the eaves to the ridge of a pitched roof, and not the break in the gambrel roof.

[42] This she said has been the consistent practice of the City with regard to gambrel roofs.

[43] In that regard she took the Board to one of the photographs taken by Mr. Dent showing a private garage with a gambrel roof at 1461 Jane Street, see Exhibit 1, Tab 15, that Mr. Dent said was comparable to the Subject Lands.

[44] She produced Exhibit 7 being a Google Earth photo of the premises at 1461 Jane Street and a copy of the building permit drawing submitted with a gambrel roof.

[45] Exhibit 7 clearly displays the height mean using the measurement at the eaves and to the ridge of the peaked roof (and not at the mid-roof break of the roof).

[46] The building permit drawing also contains the following notation:

Storage okay. Can't be used for apartment/living quarters. Height complies w/Zoning By-law (13'6"). Beverly Hall July 15/05

[47] Ms. Hillier advised the Board that in 2005 prior to her marriage, she as Beverly Hall, and that she had made the notation on the building permit drawing, and changed her name to Hillier following her marriage.

[48] Ms. Hillier testified that the appropriate methodology to measure height on a gambrel roof was from the eaves to the ridge and that with regard to the 1989 building permit her evidence was that the calculation would have been 14 ft. or 4.26 m. which she confirmed was over the 4.1 m height limit that would have been in effect in 1989, but not the 17 ft. or 5.18 m as calculated by Mr. Tunnock. She also disagreed with Mr. Tunnock that the "effective height" difference was 0.6 m.

[49] Ms. Hillier then took the Board to her analysis of the new survey that had been produced by the Owners as found in Exhibit 1, Tab 14. This survey had been completed as of October 15, 2012.

[50] From that survey she had recently done calculations as to Lot Area, Garage Area, Carport Area, and Main Dwelling Area. Her results (found in Exhibit 6) were that the Lot Coverage of Accessory Structures (garage and carport) was actually 15.21% and that the gross floor area of the garage was 56.80 sq. m on each storey for a total gross floor area of 113.60 sq. m, which exceeded the gross floor area of the main dwelling on the Subject Lands which was 107.67 sq. m. (ground floor area).

[51] From these calculations she noted that the actual lot coverage of accessory structures exceeded the variance requested at 10.5%, but not sought by the owners' planner.

[52] She then drew the Board's attention to the definition of "Accessory" in the Zoning By-Law. She opined that the definition required the accessory structure to be detached from the main use, (which it is not currently) and that the accessory structure is to be naturally and normally incidental, subordinate and exclusively devoted to the principal use, building or structure located on the same lot. She noted that the garage height is higher than the main dwelling.

[53] Next Ms. Hillier took the Board to the definition of Garage, Private as noted above. She highlighted to the Board that the garage is to be designed or used for the storage of one or more private vehicles and the storage of household equipment, incidental to residential occupancy. She noted the active use of the second storey by the Owners.

[54] Ms. Hillier then provided a number of photographs of the properties immediately in the vicinity of the Subject Lands. The photographs at Exhibit 4, Tab 8 (C) illustrate detached dwellings in a mature area, predominantly of modest height of one to one and a half storeys, and with detached garages of one storey. The photographs at Exhibit 4, Tab 8 (B) include a number taken from Regina Street looking at the Subject Lands. Photograph 7 is dated as of August 2009 showing the previous iteration of the garage with gambrel roof. It was higher than the main dwelling on the Subject Lands, and the abutting bungalow to the west. Photographs 1, 2, and 3 are dated as of January 29, 2010 and show the garage with the raised second storey exterior walls, and hip roof extending over the carport area.

[55] Ms. Hillier then provided her opinion with regard to the three requested variances.

[56] With regard to whether the variances were minor in nature, Ms. Hillier advised that cumulatively the variances were out of character with the neighbourhood and that the height requested for the garage was higher than many main dwellings in the neighbourhood. She stated that she believed Mr. Tunnock had not correctly calculated the height in accordance with the by-law and that she disagreed with his assessment that this was just a change in roof design. She testified that the new roof had raised the outside walls, and the roof had been extended to cover the carport deck. This

effectively increased the lot coverage to 15.1%, and thus greater than that which had been applied for at 10.5%.

[57] With regard to whether the variances were desirable for the appropriate development or use of the land, building, or structure, Ms. Hillier highlighted the definitions of accessory, and garage private. She said that included in the definition of “accessory” were the concepts of being detached, normally incidental and subordinate and exclusively devoted to the principal use. In these circumstances while the storage of vehicles was acceptable, she did not find the garage to be incidental or subordinate to the main use on the property when the garage was taller and bigger than the main use on the property, and as noted the garage is presently attached.

[58] With regard to the general intent and purpose of the Zoning By-law, Ms. Hillier noted that the Zoning By-law section 3.25.4 an accessory building shall not exceed one storey or 4.1 m in height whichever is the lesser. She indicated that the clear intent of the by-law was for one storey or 4.1 m height. This proposed height at 6.7 m did not meet that intent. Moreover she directed the Board again to the definitions of garage private, and accessory and noted the intent of the by-law for a private garage was for storage of private vehicles, and storage of household equipment and that the active use of the second floor as a recreational adjunct to the main dwelling did not comply with the by-law. Nor did the height and gross floor area comply with the definition of accessory which was to be incidental and subordinate to the principal use.

[59] Ms. Hillier noted that while the lot coverage was now at 15.21%, and therefore not in compliance with the Zoning By-law, it was the second floor and height that were the critical components of the application.

[60] In conclusion she stated that the variances were: not minor in nature, not desirable, did not meet the general intent and purpose of the by-law and did not represent good planning. Therefore in her opinion the variances as requested should be denied.

[61] Following Ms. Hillier’s evidence, counsel for the Owner called Mr. Tunnock in reply. Mr. Tunnock recanted his previous evidence with regard to the necessity of dealing with the variance for the lot coverage, and agreed with the evidence of Ms. Hillier that a variance for lot coverage at 15.21% was required. He confirmed that his

opinion now was that variances were required for height and lot coverage but the second floor variance was not required because of the 1989 building permit.

EXISTING USE

[62] The practice of the Board in situations where construction has preceded the variances sought, is to pay little or no attention to that fact. The objective is good land use planning and s. 45(1) of the *Planning Act* sets out the four tests as the framework for consideration of the variances.

1989 BUILDING PERMIT

[63] Significant emphasis is placed on the 1989 building permit for the Subject Lands. The Owners' position is that the City, by approving the 1989 building permit, explicitly allowed a second storey and lot coverage: hence Mr. Tunnock's original opinion that only a variance for height was required.

[64] An examination of the materials provided by the Owners does not so satisfy the Board.

[65] Firstly, the hand written notation on the first drawing at Exhibit 1, Tab 3 sets out the City approval on the basis that this is a: ... **“proposed 1 storey detached garage approved in accordance with N. Bay Zoning By-law.”** (emphasis added).

[66] Secondly, the third building permit drawing clearly connotes that the area beneath the gambrel roof was for “storage use only”.

[67] And thirdly the Board notes that there is no 1989 building permit drawing that specifically shows a second storey. Had there been a second storey approved, one would have reasonably anticipated either an internal or external access to the second storey. There is no such access on the approved building permit plans shown to the Board.

[68] Thus the Board finds that the 1989 building permit issued by the City of North Bay did not approve a second storey.

[69] The Board observes that the same building permit drawings from 1989 referenced above, also show a 16' by 17' deck attached to the main dwelling and a 12' setback to the garage. Reference to the 1985 H. S. Wilde survey that the parties believe to be at Exhibit 1, Tab 11 Schedule A shows no such deck. The Board inquired from Mr. Dent who built the deck and he advised that the Vendor had built that deck. Thus the Board finds that the deck existed at the time of purchase by the Owners in 2000 but was not shown on the 1985 survey.

[70] The Board however does concur with Ms. Hillier that the building permit approval in 1989 should have either limited the height to 4.1 m or required a minor variance for the actual height in 1989 of 4.26 m.

DECISION

[71] As required by s. 3(5)(a) of the *Planning Act*, the Board has considered the question of consistency with the Provincial Policy Statement. As required by s. 2 of the *Planning Act* the Board has had regard for matters of provincial interest. Neither is at issue.

[72] The Board then turns to s. 45(1) of the *Planning Act*: the general intent and purpose of the Official Plan, the general intent and purpose of the Zoning By-law, whether the variances are desirable for the appropriate use of the land, and whether the variances are minor.

[73] The parties agreed that there was no issue with the policies of the Official Plan and the Board agrees.

[74] The Subject Lands are zoned R3 and pursuant to s. 3.25 of the Zoning By-law accessory buildings are permitted in any yard, in any zone, subject to the provisions of that zone, and subject to the additional provisions set out in s. 3.25.

[75] Does the 1989 building permit alter the need for the three variances? The Board's finding of the 1989 building permit is that it did not authorize a second storey. The clear approval on the face of the drawing and notation by the building official is that approval was on the basis of a one storey detached garage. The reference to "storage use only" pointing to the area below the roof on another drawing and the absence of any

means of access to a second storey is consistent with that approval, and storage above would have been on the open rafters. Thus the Board finds contrary to Mr. Tunnock's evidence that a variance for a second storey is required.

[76] With regard to lot coverage, at the conclusion of the hearing, the witnesses had agreed that a new larger variance at 15.21% was required for lot coverage due to the extension of the hip roof over the carport area. (In these circumstances, the Board pursuant to s. 45(18.1) finds the amendment of the minor variance application to 15.21% for the purposes of the hearing to be a minor amendment, and that no further notice is required).

[77] The clear expressed intent and purpose of the Zoning By-law is that accessory buildings shall not exceed one storey or 4.1 m in height whichever is the lesser, and shall not exceed 10% lot coverage, and that a private garage is for the storage of private vehicles and household equipment incidental to residential occupancy. The Board characterizes these uses as being passive in nature.

[78] The private garage on the Subject Lands has two storeys, a gross floor area of over 113 sq. m, exceeds the size of the ground floor area of the main dwelling, has a maximum height as defined by the by-law of 6.7 m, and is actively used for purposes well beyond the storage of private vehicles and household equipment incidental to residential occupancy.

[79] The provision of a second storey with insulation, heating, plumbing, a three piece washroom, windows, five sky lights, double doors out to the deck with the hot tub, a bar, billiards table, and projection TV are all indicators of active use of the second storey.

[80] The Board finds that the existing second storey does not meet the clear intent and purpose of the Zoning By-law. The Board finds that the gross floor area of the private garage is larger than the main dwelling and cannot be said to be naturally or normally incidental and subordinate to the main use. The Board finds that the uses of the garage go beyond the clear intent and purpose of the zoning by-law for the storage of private vehicles and household equipment. The language of the by-law clearly discloses an intended passive use for a private garage. What is evident from the hearing is that the actual use of this structure is an active use never envisioned by the

Zoning By-law. The Board finds that the variances do not meet the general intent and purpose of the Zoning By-law.

[81] With regard to the third test as to desirable for the appropriate development or use of the land building or structure, the Board finds that this is not simply the case of replacing one roof with a roof of a different design. The Board finds that the provision of a second floor, with a height of 6.7 m and a lot coverage at 15.21% is not appropriate development as the use of the private garage is not incidental to nor subordinate to the main use. The Board finds that the private garage is actually higher and larger than the main dwelling.

[82] With regard to the fourth test of minor, the Board does not take a mathematical approach to such matters. The zoning regulations are a means to an end. The end is good planning.

[83] In this regard the Board notes that the Subject Lands are found within an immediate neighbourhood that may be characterized as mature and settled. The photographs of the City as found in Exhibit 4, Tab 8, depict predominantly one and one half storey homes of modest size and single storey garages.

[84] The evidence of Ms. Hillier is that the subject private garage with its second floor, its 15.21% lot coverage and existing 6.7 m maximum height is out of character with the immediate surrounding neighbourhood as it is larger and higher than many of the principal dwellings. In her view it did simply not "fit" the neighbourhood.

[85] Mr. Tunnock opined that there was no negative impact created by the private garage, the height was only 0.6 m over what had been approved and that there was no neighbourhood objection. Thus it should be accepted as minor.

[86] The Board prefers the evidence of Ms. Hillier.

[87] The Board notes that the private garage is located with "frontage" onto Regina Street and it stands between two detached residential dwellings. Because of its height, and size the Board finds that the private garage on the Subject Lands is out of character with the existing neighbourhood of predominantly modest and one and one half storey principal dwellings. The Board also finds that the height of the private garage towers

over the abutting property to the west, and at a setback from the rear property line of 0.6 m creates a virtual wall to the abutting property with a modest bungalow. Thus the Board finds that the fourth test is not met.

[88] Section 45(1) of the *Planning Act* requires that all four tests must be met to the satisfaction of the Board.

[89] As the Board has found that the application does not meet the general intent and purpose of the Zoning By-law, is not desirable for the appropriate development or use of the land, building or structure, and is not minor in nature, the Board orders that the variances are not authorized. The appeal is therefore dismissed.

“Blair S. Taylor”

BLAIR S. TAYLOR
MEMBER