

ISSUE DATE:

AUGUST 24, 2012



PL120460

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: Michael & Patti Callahan
Subject: Minor Variance
Variance from By-law No.: 28-80
Property Address/Description: 223 West Peninsula Road
Municipality: City of North Bay
Municipal File No.: A-04-12
OMB Case No.: PL120460
OMB File No.: PL120460

APPEARANCES:

Parties

Michael Callahan

Agent

A. Curran

DECISION DELIVERED BY C. HEFFERON AND ORDER OF THE BOARD

In 2004, Michael and Patti Callahan (“appellants”) acquired a property on Trout Lake, in North Bay. On the 2169.4 ha property are a 217.2 m², one-storey single family dwelling, two storage sheds totaling approximately 16 m² in area and an existing cottage/storage shed approximately 22 m² in area (Exhibit 1). The dwelling is the appellants’ year-round residence.

A condition of the site plan agreement with the City of North Bay (“City”) entered into by the appellants in June 25, 2004 in connection with the construction of a new septic system and a proposed new gazebo on the water’s edge, required the appellants to demolish the existing cottage and storage sheds. The site plan agreement is entered into evidence as Exhibit 3. A photo of the cottage/storage shed is entered into evidence as Exhibit 2, photo #4.

On January 31, 2012, the appellants applied to the City for a revision to the site plan agreement to allow them to retain the cottage/storage shed and forego construction of the gazebo. Three minor variances are required.

On April 3, 2012, the Committee of Adjustment (“Committee”) refused their application for the three requested minor variances. The appellants have appealed that decision.

Matter before the Board

The appellants request the following variances from the provisions of Zoning By-law 28-80 (“By-law”):

- Section 10.3.2(8) of the By-law permits maximum lot coverage of 10%, whereas a lot coverage 11.7% is proposed;
- Section 3.25.9(1)(a) of the By-law permits a maximum size of 10 m² in accessory buildings in the front yard, whereas 22 m² is proposed; and
- Section 10.3.5 of the By-law requires a minimum side yard setback for an accessory structure of 3 m, whereas a side yard setback of 1.8 m is proposed.

Statutory context

In order for a variance from the provisions of a zoning by-law to be authorized, it must satisfy the four tests as set down in subsection 45(1) of the *Planning Act*. It must conform to the general intent and purpose of the official plan; it must conform to the general intent and purpose of the zoning by-law; it must be minor both quantitatively and in impact on surround properties; and it must be desirable for the appropriate development of the subject property. If it fails even one of those four tests, the Board must refuse to authorize it.

Evidence and analysis

Mr. Callahan, one of the appellants, confirmed that the existing 22 m² accessory structure that had formerly been used as a cottage is now used exclusively for storage. He said that all plumbing has been removed and the septic system that had served the cottage has been decommissioned.

Mr. P. Woodbury was qualified as a participant to these proceedings. He told the Board that he is a member of the Committee of Adjustment, was familiar with the application, and had voted against the application on March 28, 2012. Mr. Woodbury expressed his on-going concern that the plumbing might be re-installed and the cottage might at some time in the future again be occupied and/or used for recreational purposes. This, he maintains, would compromise water quality of Trout Lake.

Ms. B. Hillier, the manager of Planning Services for the City, appeared under summons from the appellants. Ms. Hillier was qualified by the Board to give opinion evidence on land use planning. She testified that her department supports the appellants' application to the Committee. The report of Planning Services to the Committee dated March 28, 2012 is entered into evidence as Exhibit 4.

Ms. Hillier advised that the City of North Bay Official Plan ("OP") was approved by the Minister of Municipal Affairs and Housing on January 6, 2012 and thus represents, in her opinion, the current policies of Council. She testified that Council has in this OP carried over from the former OP the policies respecting water quality of Trout Lake, which is the source of drinking water for North Bay. She advised that a key component of its policy respecting Trout Lake is to ensure that there is adequate vegetative cover on lands bordering the lake.

Ms. Hillier referenced the report of FRI Ecological Services Ltd ("FRI Report"). She testified that the FRI Report confirms that if the other two on-site storage sheds were removed and the permitted gazebo was not constructed, those parts of the subject property might be re-planted to increase the vegetative cover and provide a vegetative buffer within 15 m of the high water mark of the lake. This would provide the vegetative cover specified in the FRI Report and conform to the policy of the OP respecting water quality of Trout Lake.

The subject property is designated Lakefront Residential in the OP. Ms. Hillier testified that neighbouring properties are similar in nature with low density lakefront residential uses predominating on what, she informed the Board, are classified under section 10.3 of the By-law as "undersized lots of record".

The Board accepts Ms. Hillier's evidence and finds that the requested variances both individually and cumulatively conform to the general intent and purpose of the official plan.

Ms. Hillier then directed the Board to the By-law. The subject property is zoned Rural Residential Lakefront ("RRL"). When the appellants applied for a minor variance in 2006 in order to construct a new septic system, permission was granted on the condition that the existing cottage is removed. As noted above, this condition was not fulfilled. She testified that other deficiencies of the property as developed, respecting lot area, front and rear yard setbacks were granted in earlier Committee decisions. The Board accepts Ms. Hillier's evidence and finds that granting the requested variances will bring the subject property into full conformity with the general intent and purpose of the By-law.

Ms. Hillier testified that the requested variances are minor. There is no impact on any of the surrounding properties and, quantitatively, the variances are, in her opinion, minor. The Board accepts Ms. Hillier's evidence and finds that the requested variances are minor both individually and cumulatively.

She then gave her professional opinion that the requested minor variances both individually and cumulatively represent good planning and are desirable for the appropriate development of the subject property. Her evidence was not contested.

The Board accepts Ms. Hillier's evidence and finds that the requested variances both individually and cumulatively represent good planning and are desirable for the appropriate development of the subject property.

Disposition and Order of the Board

The Board Orders the appeal is allowed and the requested minor variances are authorized subject to the following four conditions, which were also noted in the March 28, 2012 Planning Services report to the Committee (Exhibit 4, page 4):

1. That the existing sheds be demolished via demolition permit by October 31, 2012;
2. That the area left vacant by the removal of the two existing sheds be re-vegetated to the satisfaction of Planning Services;

3. That the appellants apply for a Change of Use Permit for the cottage building to an accessory structure by October 31, 2012; and
4. That the Site Plan Control Agreement be amended to reflect these changes.

So Orders the Board.

"C. Hefferon"

C. HEFFERON
MEMBER