

ISSUE DATE:

Sept. 4, 2012



PL120513

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

Appellant:	Frank Newman
Applicant:	2259031 Ontario Inc.
Subject:	Minor Variance
Variance from By-law No.:	28-80
Property Address/Description:	383 Aubrey Street
Municipality:	City of North Bay
Municipal File No.:	A08-12
OMB Case No.:	PL120513
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APPEARANCES:

Parties

Counsel

Frank Newman

2259031 Ontario Inc.

W. Brunton

DECISION DELIVERED BY C. HEFFERON AND ORDER OF THE BOARD

Background

2259031 Ontario Inc. ("applicant") proposes to develop a double duplex, 4-unit residential building at 383 Aubrey Street ("subject property") in North Bay. The former dwelling was demolished in 2004; the subject property has been vacant since then.

To develop the double duplex, the applicant applied for and was granted a minor variance from the frontage provisions of Zoning By-law 28-80 ("By-law") by the Committee of Adjustment ("Committee") on May 1, 2012.

Mr. F. Newman has appealed that decision to the Ontario Municipal Board ("Board").

Matter before the Board

Section 5.2.2 of the By-law requires a minimum frontage of 22.8 m for a double duplex dwelling complex, whereas a frontage of 18.36 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.

Appellant's position

Mr. Newman explained he owns and occupies a single family home that abuts the subject property to the south. He advised that his principal concern is the width of the proposed driveway accessing the required eight parking spaces in the rear of the proposed double duplex. He contends that a "commercial development" requires a driveway wide enough for 2-way access, whereas a driveway that permits only one car to pass at a time is proposed.

Applicant's position

The applicant contends that its proposal is for residential development and conforms to the requirements of the City of North Bay Official Plan ("OP") and the By-law in all respects except minimum frontage.

Evidence and analysis

The Board qualified Ms. B. Hillier to give opinion evidence on land use planning.

She disputed Mr. Newman's contention that the development should be considered to be "commercial" because it is proposed to be a rental complex. She testified that the proposed development is "residential" and not commercial and that in a residential

development of the size proposed, a driveway that allows two-way access is not required. The Board accepts Ms. Hillier's evidence and finds that the proposed development is indeed residential.

Addressing the four tests, Ms. Hillier took the Board first to the OP. She advised that the designation of the subject property is residential and open space. She advised that OP policy 2.1.1 applies to the subject property. The 15 m portion of the property that abuts Chippewa Creek is designated open space. She testified that the area designated open space will remain as a vegetative buffer to the creek. She confirmed that the proposed double duplex conforms to policy 2.1.1 of the OP. The Board accepts Ms. Hillier's evidence and finds that the requested variance conforms to the general intent and purpose of the OP.

She then took the Board to subsection 5.2.2 of the By-law. She advised that under the By-law, the subject property is zoned RM 2 (residential multiple second density), and that the proposal conforms in all respects to the standards in for RM2 except as regards minimum frontage. She explained that although the By-law requires a minimum frontage of 22.4 m for multi-family residential development and the existing frontage is only 18.36 m, it is her professional opinion that this reduced frontage meets the general intent and purpose of the By-law. Her evidence was not contested. The Board therefore accepts Ms. Hillier's evidence and finds that the proposed variance conforms to the general intent and purpose of the By-law.

She testified that the requested variance is desirable for the appropriate development of the subject property primarily because the proposed development represents intensification, which is encouraged by both the OP and by Provincial policy within areas of the municipality that are serviced with mature infrastructure including schools and recreation facilities. Her evidence was not opposed. The Board therefore accepts this evidence and finds that the requested variance is desirable for the appropriate development of the subject property.

Ms. Hillier advised the Board the subject property is under Site Plan Control. Designs submitted show a board-on-board fence running between the subject property and Mr. Newman's property. The fence will, she testified, provide adequate separation between the subject property and Mr. Newman's property, including the driveways of the two

properties, but will not interfere with the functioning of the open space abutting Chippewa Creek. She therefore testified that the requested variance is minor both numerically and because it will have no unreasonable adverse impact on any the surrounding properties. The Board accepts this evidence and finds that the requested variance is minor.

Finally, the Board adopts and relies on Ms. Hillier's opinion evidence that the proposal represents good planning and has adequate regard to the provisions of section 2 of the *Planning Act*.

Disposition and Order of the Board

The Board Orders the appeal is dismissed and the requested minor variance is authorized subject to a Site Plan Agreement between the applicant and the City being signed and duly authorized.

So Orders the Board.

"C. Hefferon"

C. HEFFERON
MEMBER