

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** May 13, 2015

**CASE NO(S):** PL141024

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Michael W. Joy
Subject:	Minor Variance
Variance from By-law No.:	87-57
Property Address/Description:	442 Lodor Street
Municipality:	City of Hamilton
Municipal File No.:	A-184/14
OMB Case No.:	PL141024
OMB File No.:	PL141024

**Heard:** March 17, 2015 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

**Representative**

Sandro Codognotto

John Lamarre

Michael W. Joy

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. JONES AND J. V. ZUIDEMA ON MARCH 17, 2015 AND ORDER OF THE BOARD**

---

[1] The appeal concerns a variance from Zoning By-law No. 87-57 of the City of Hamilton. More specifically, that By-law permits a maximum lot coverage of 35% whereas the variance approved by the Committee of Adjustment permitted a maximum lot coverage of 39.4% in order to construct a new home for Sandro Codognotto (the "Applicant") on lands known municipally as 442 Lodor Street (the "subject property").

Michael W. Joy, (the “Appellant”), who lives immediately to the south of the subject property, appealed the Committee’s decision.

[2] The Ontario Municipal Board (the “Board”) heard from the Applicant of his desire to build a new single storey home to replace an older house within an existing building footprint of approximately 100 square metres (“sq m”). The subject property has a lot area of 724 sq m. The proposed new home would be a bungalow with a floor area of approximately 2,300 square feet (“sq ft”). The Committee of Adjustment, as noted, approved a lot coverage variance of 39.4%.

[3] The Board also heard from the Applicant that a larger coverage variance of 42.8% had been initially proposed to the Committee. The variance was reduced to 39.4% before the Committee of Adjustment.

[4] The Board heard from the Applicant of his desire to reside in the new residence and make it wheelchair accessible. Mr. Codognotto is also a builder and will assume responsibility for the construction of the new home.

[5] With regard to site drainage, the Board also heard from John Lamarre, an engineer with expertise in stormwater management. Mr. Lamarre was originally retained by the Applicant to resolve potential stormwater runoff impacts arising from the larger building coverage and existing site conditions. Mr. Lamarre was qualified as an expert in stormwater management.

[6] Mr. Lamarre opined that in the absence of controls, the subject property would discharge directly onto the northerly, adjacent lot, which has a lower elevation, rather than to the roadway and/or swales. Mr. Lamarre recommended in a report submitted as evidence, the installation of a soakaway pit with a water storage volume of 8.1 cubic metres. Mr. Lamarre also stated that the City’s Building Department desired a higher storage volume of 12 cubic metres as a condition of building permit approval. The pit would be installed in the northeast corner of the subject lands.

[7] The Appellant, who lives in the adjoining home south of the subject property, stated that in his opinion, surface discharge would also flow in the direction of his property which Mr. Lamarre earlier testified was at a higher elevation than the subject lands. Mr. Joy also expressed concerns involving the loss of privacy in his rear yard which would arise from the new, single storey home protruding deeper into the rear yard area beyond the rear setback of the current house.

[8] The Board also heard from Barbra Love, a homeowner who lives opposite the rear lot line of the subject lands. Ms. Love, who testified as a participant, expressed concerns about the prospects for flooding as well.

[9] In summary, the Board found that efforts had been taken by the Applicant to ensure that drainage remediation would be effected in compliance with City standards although the Board will impose the higher storage pit volume of 12 square metres in recognition of the City's recommendation.

[10] In reference to the minor variance regarding lot coverage, the Board has taken into consideration s. 45(1) of the *Planning Act* and determined that the four tests of a minor variance have been met.

[11] In consideration of that section, the Board finds that the variance is minor. The Board also notes that no other zoning variances arise from the higher lot coverage, and in the Board's opinion, that fact suggests that the new home will achieve a suitable fit on the lot which is larger than many comparative, single family, urban lots.

[12] Moreover, with respect to loss of privacy, the Board understands the Appellant's concerns but his apprehensions were not sufficient to successfully undermine the opinions contained in the Planning Report from the City of Hamilton which supported the variance and concluded that it met the four tests. That report was contained in the Board's file as it was submitted as part of the municipal record.

[13] Finally, and returning to the matter of stormwater discharge, the Board has confidence that the effects of increased discharge will be mitigated completely by the installation of the soakaway pit, affirming that conditions of site and neighbourhood compatibility in relationship to the tests of s. 45(1) of the *Planning Act* will be met and satisfied.

## **ORDER**

[14] The Board orders that the appeal is dismissed and that the variance to By-law No. 87-57 with respect to 39.4% maximum lot coverage for lands known municipally as 442 Lodor Street be authorized subject to the condition that a soakaway pit of 12 cubic metres minimum be installed in accordance with the specifications of the City of Hamilton.

*“R. Jones”*

R. JONES  
MEMBER

*“J. V. Zuidema”*

J. V. ZUIDEMA  
VICE CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

### **Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248