

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 30, 2015

CASE NO(S): PL141302

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

Applicant and Appellant:	André O'Bumsawin
Subject:	Minor Variance
Variance from By-law No.:	06-10
Property Address/Description:	1408 Peterson Road
Municipality:	Township of Minden Hills
Municipal File No.:	A-20/2014
OMB Case No.:	PL141302
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OMB Case Name:	O'Bumsawin v. Minden Hills (Township)

Heard: April 7, 2015 in Minden, Ontario

APPEARANCES:

Parties

Representative

Town of Minden Hills

C. McKnight

Andre O'Bumsawin

A. O'Bumsawin, F. Laurie

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

BACKGROUND

[1] This is the decision for an appeal by Andre O'Bumsawin ("Appellant") against the refusal by the Committee of Adjustment ("Committee") of the Township of Minden Hills

("Township") of an application for minor variances to Zoning By-law No. 06-10 to facilitate the construction of a new four season dwelling on a property at 1408 Peterson Road.

[2] The subject property is a waterfront lot on the shoreline of Twelve Mile Lake that has approximately 15 metres ("m.") of frontage on the lake and has an area of approximately 604 square metres ("sq. m."). The Appellant intends to remove the existing single-storey cottage on the property and replace it with a new two-storey dwelling. A new septic system will also be required for the expanded dwelling.

REQUIRED VARIANCES

[3] The proposal requires the following variances from the provisions of Zoning By-law No. 06-10:

1. From s. 5.2 which requires the maximum permitted lot coverage in the Shoreline Residential Zone of 15 %, whereas the proposed lot coverage will be 17.39 %,
2. From s. 4.7.4 (v) to increase the coverage of the non-complying building/structure by 16.8 % over the 25 % increase permitted for legal non-complying buildings, and
3. From s. 5.2 and 4.7.4(iii) to increase the building height by more than 1.2 m. allowed for a legal non-complying building. The proposed building will have a height of 1.03 m. greater than the 1.2 m. increase allowed for a total increase of 2.23 m.

[4] As a result of changes to the Appellant's proposal, the above variances differ from those considered by the Committee. However, the Board heard that all of the revised variances represent reductions in the deviations from the By-law's standards when compared to the variances that were considered by the Committee.

[5] The hearing proceeded to hear evidence on the revised variances.

[6] It was Chris Jones expert planning opinion that the changes to the application were minor and that no further notice is required under s. 45(18.1.1) of the *Planning Act* (the "Act"). The Board agrees with this opinion and has determined that a decision can be made without requiring further notice.

ISSUE

[7] The main issue in this appeal is whether or not the variances meet the four tests under s. 45(1) of the Act. More specifically do the variances maintain the general purpose and intent of the Minden Hills Official Plan, do they maintain the general purpose and intent of Zoning By-law No. 06-10, are the variances desirable for the use of the property and are they minor?

EVIDENCE

[8] The Board heard evidence on behalf of the Township from Mr. Jones, President, Municipal Planning Services Ltd. Mr. Jones is a Registered Professional Planner who has over twenty years of experience. He was qualified by the Board as an expert in land use planning.

[9] The Board heard evidence in support of the proposal from Mr. O'Bumsawin.

[10] The Board heard no other evidence in relation to this appeal.

RELEVANT FACTS

[11] Based upon the submissions of the parties the Board has determined that the following facts are relevant to this appeal.

[12] The subject property is a small shoreline lot that is zoned Shoreline Residential. The existing dwelling on the property is considered legal non-complying because it does not meet front, rear and side yard setback requirements of By-law No. 06-10. The By-law recognizes that there are many non-complying buildings in shoreline areas and sets out specific provisions in s. 4.7.4 which states the following:

Permitted Non-Complying Building or Structure: Nothing in this By-law shall prevent the reconstruction, relocation, renovation or repair of an existing legal non-complying building or structure on a lot provided such enlargement, reconstruction, relocation, renovation or repair does not increase the extent of non-compliance by:

- i) increasing the lot coverage if the existing buildings or structures exceed the permitted lot coverage;
- ii) reducing the yard between a lot line and the existing building or structure if the existing yard is less than the required yard except that such yard may be reduced so long as the distance between any high water mark and the nearest part of any such building or structure is a minimum of 15 metres;
- iii) increasing the height of the building or structure by no more than 1.2 metres;
- iv) reducing the gross floor area of the existing building or structure if the existing gross floor area is less than the minimum permitted in this By-law, or
- v) increasing the coverage of the legally non-complying building or structure by more than 25 %. (Exhibit 3).

[13] The subject property is designated partially as Waterfront and partially as Rural Settlement in the Township Official Plan. However, s. 3.1.3.5 of the Official Plan requires that the Waterfront policies of the plan shall apply to any lot with frontage on a shoreline location within an identified settlement area (Exhibit 23, p. 5).

[14] Section 3.2.4 of the Official Plan includes policies encouraging high quality design within waterfront areas, development control and the protection of significant natural heritage features and ecological functions. Section 3.2.4 includes the following objectives:

... to enhance the unique character of the Township's waterfront areas by encouraging waterfront design that is complementary and compatible with existing development, the Township's natural heritage and fosters a strong sense of place;...

...to exercise appropriate municipal development control in order to achieve a consistently high quality of site, building and landscape design.... (Exhibit 23, p. 6).

[15] Section. 3.2.4.1 of the Official Plan states in part:

- (b) The design of all buildings shall have regard to appropriate setbacks and the protection or provision of vegetative buffers along the lakefront. Buildings and building expansions should be massed to recognize appropriate scale and provide an appropriate building height at the waterfront and be designed to provide visual variety and interest. Generally, building features such as canopies, decks, and varying façade materials and setbacks should be used to reinforce a lake friendly scale...
- (e) Buildings in the Waterfront will be designed and constructed to blend in to the natural environment and preserve historic architectural characteristics of the lake. The Zoning By-law implementing this Official Plan may include regulations that will:
 - ii) limit the expansion and additions to existing dwellings where the building does not comply with current By-law standards and regulations including shoreline setbacks...;
 - iv) limit the height of buildings to ensure that building height does not intercept the mature natural treeline when viewed from the water.... (Exhibit 23, p. 6-7).

ISSUES, ANALYSIS AND FINDINGS

[16] The Appellant contends that the proposal is appropriate and the variances meet the four tests under s. 45(1) of the Act. The Board heard that the Appellant has a serious illness which requires use of a wheel chair. One of the reasons for the proposed expansion is to provide additional space on the main floor of the dwelling for maneuvering the wheel chair and to retain three bedrooms that the cottage currently contains by locating them on the second floor.

[17] The Board heard that the Appellant had taken two versions of the proposal to the Committee which were refused, although the Committee did approve variances for rear yard setback and interior side yard setback. The Appellant presented a further revision to the Board which has eliminated some proposed variances and reduced the magnitude of the others to the point where he believes they are acceptable.

[18] The Appellant maintained that the proposed variance for height is appropriate and he provided photographic and oral evidence of examples of two storey dwellings on other properties in the vicinity (Exhibits 18, 19, 20, 21, 22, 27). In response to concerns from the Township that the proposal will create a two-storey dwelling, he indicated that Zoning By-law No. 06-10 does not prohibit two storey dwellings on the subject property.

[19] The Township maintained that the proposal represents an overdevelopment of the property. Mr. Jones stressed the significance of shoreline lots and limiting development in order to protect the character of the shoreline and to maintain natural heritage features and functions. He expressed particular concern about the proposed height of the dwelling. He contended that the subject property is a small shoreline lot, and the applicable planning documents require that shoreline development should be designed and implemented with extra care. Mr. Jones' expert planning opinion was that the proposal was not appropriate for the property and that the variances fail all four tests under s. 45(1) of the Act.

[20] After considering the evidence, the Board recognizes that the Appellant has legitimate needs to expand the dwelling. The Board heard that the Appellant and Township had discussed a number of options and had nearly agreed to settle the appeal.

[21] However, the Board views the provisions of the Official Plan as placing an obligation on the Township to provide extra protection and take additional care when considering development in shoreline areas. The Board heard that Twelve Mile Lake has special natural heritage significance because it is a lake trout lake.

[22] The Board interprets the provisions of the Official Plan for areas designated Waterfront as requiring that the scale and massing of buildings be restricted so that the built form does not dominate the shoreline. Based upon the evidence, the Board has concluded that the Appellant's proposal, because of the reduced setbacks and proposed increases in coverage and height, will result in a structure that will not be

complementary and compatible with the shoreline area as required in s. 3.2.4 of the Official Plan. It is not only the proposed height variance that is the issue, it is the combination of increased height and additional massing caused by increased coverage and reduced setbacks that will result in a structure that is too dominant for this small waterfront lot.

[23] Based upon these considerations, the Board agrees with the planning opinion provided by Mr. Jones. The general intent of the Official Plan regarding Waterfront areas is to limit development to ensure that it is compatible with the natural character of the shoreline and with other development. Furthermore, the intent of the Official Plan is to ensure that new development does not dominate the shoreline.

[24] The Board finds that the proposal variances will result in a development that does not respect the character of the shoreline and the shoreline community as required in the Official Plan. It will result in overdevelopment of the lot and the expansion of the dwelling will not be appropriately limited as required in s. 3.2.4.1 of the Official Plan. Therefore, the Board finds that the variances do not maintain the general purpose and intent of the Township Official Plan.

[25] With regard to the By-law, the provisions of s. 4.7.4 are intended to allow some expansion of non-complying buildings, but limit any proposed expansion so that the building will still be compatible with the area and does not overpower the property. The evidence has not demonstrated that the extent of proposed increase in the coverage and height would result in a dwelling that is compatible with the area. While the Appellant provided examples of other two-storey dwellings in the area, the Board was presented with no evidence of the planning regime under which they were approved or how they may meet the relevant zoning provisions.

[26] Furthermore, as noted above, it is the combination of proposed height and reduced setbacks that result in a massing and scale that is considered excessive. Based upon the evidence the Board agrees with the planning opinion provided by Mr.

Jones and concludes that the variances would result in a structure that is not in keeping with the size of the lot and does not meet the intent of s. 4.7.4 of the By-law. The Board finds that the variances do not maintain the general purpose and intent of Zoning By-law No. 06-10.

[27] Given the relatively small size of the lot, the non-compliant setbacks and the previous Committee approval to further reduce some of the setbacks, the proposal represents an overdevelopment of the lot. The Board heard that the size of the lot may limit the ability to locate all required facilities such as a septic system and driveway on the property. Based upon these considerations, the Board agrees with Mr. Jones' expert opinion and finds that the variances are not desirable for the use of the property.

[28] With regard to the test of minor, the Board agrees with Mr. Jones' opinion that the proposal represents an overdevelopment of the lot and would have a negative impact on the character of the shoreline community. Therefore, the Board finds that the proposed variances are not minor.

[29] Based upon consideration of all of the above, the Board finds that the proposed variances fail the four tests under s. 45(1) of the Act. The Board will dismiss the appeal and the variances will not be authorized. The appropriate order is provided below.

[30] While the Board has arrived at the above-noted conclusions regarding the current application, it should be noted that the parties had been working prior to the hearing to revise the proposal in a way that would meet the Appellant's needs and be acceptable to the Township. If the Appellant still wishes to construct a new dwelling on the property, the Board encourages the parties to continue to work toward finding a proposal that may meet the Appellant's needs and more closely fulfills the Township's requirements.

ORDER

[31] The Board orders that the appeal is dismissed and the variances are not authorized.

"C. Conti"

C. CONTI
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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