

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 20, 2016

CASE NO(S): PL150710

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

Applicant and Appellant:	Stephen Florence
Subject:	Minor Variance
Variance from By-law No.:	06-10
Property Address/Description:	1145 Dugan Road
Municipality:	Township of Minden Hills
Municipal File No.:	MV A10/2015
OMB Case No.:	PL150710
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OMB Case Name:	Florence v. Minden Hills (Township)

Heard: March 22, 2016 in Minden Hills, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Karen Florence

Elaine Gray*

Town of Minden Hills

Ian Clendening

DECISION DELIVERED BY L. M. BRUCE AND ORDER OF THE BOARD

INTRODUCTION

[1] Stephen and Karen Florence (the “Applicants”) applied to the Committee of Adjustment (the “Committee”) seeking relief from Zoning By-law No. 06-10 (“ZBL”) in order to permit the expansion of an existing cottage. The Applicants are appealing the Committee’s decision to deny the variances.

THE SUBJECT PROPERTY AND PROPOSAL

[2] The subject property is located at 1145 Dugan Road in Part Lot 17, Concession 1 of the geographic Township of Minden, and now in the Township of Minden Hills ("Township"). The lot is located at the northwest point of a small bay on Canning Lake.

[3] The subject property is zoned Shoreline Residential. It has a lot size of 0.20 hectares with approximately 42.8 metres ("m") of frontage on Canning Lake. The existing building is 145.7 square metres ("sq m"). The current dwelling is situated 23 m from the high water mark. The subject property is serviced by a septic tank and filter bed on the north (i.e. landward side) of the three season dwelling.

[4] The application is for an addition to the cottage that would support a second bathroom and a screened-in porch. The addition would also allow for an expansion to the existing kitchen and laundry room. The proposal is to extend the existing cottage to the limit of the existing deck which faces the lake. A new deck would be added to the front of the cottage that would not extend into the requested setback by 3 m.

[5] The requested variances are to permit a front yard setback of 19.5 m whereas 23 m is required for lots created prior to February 22, 2005 and to permit a maximum lot coverage of 16.6% when 15% is required.

[6] Ryan Hughes, testified in support of the Applicants' application. Mr. Hughes is a builder and licenced septic installer who was consulted by the Applicants on how to improve the existing cottage layout. Mr. Hughes reviewed for the Board the on-site constraints that prohibited expansion in any other direction other than as proposed (Exhibit 1, Tab 6). The constraints affecting options for cottage expansion include an existing septic system to the rear of the cottage and limited space in the cottage side yards. He explained that the septic system could not be moved to another location on the property due to required separation distances from wells on the Applicants' and neighbouring properties. He also indicated that the cottage cannot be raised since the existing foundation would not support a second storey. The Applicants indicated that

demolishing the existing cottage and rebuilding a new cottage is cost prohibitive.

[7] Mr. Clendening, planner with the Township, had prepared the planning report that was provided to the Committee. Mr. Clendening appeared as an Agent for the Township and also testified on behalf of the municipality. The planning report, he stated, was not prepared with the aide of a site visit and did not include a recommendation for either approval or denial. Mr. Clendening's predominant concern was the variance for the reduced setback from the waters edge.

ANALYSIS AND FINDINGS

[8] When considering a minor variance, the Board must consider the four-part test set out in s. 45(1) of the *Planning Act* ("Act"):

- a) Does the variance maintain the general intent and purpose of the official plan (the "OP")?
- b) Does the variance maintain the general intent and purpose of the zoning by-law?
- c) Is the variance desirable for the appropriate development or use of the land?
- d) Is the variance minor?

Official Plan

[9] Mr. Clendening stated that the subject lands are within the Waterfront designation under the Township's OP. The policies in the OP include provisions for the protection of the shoreline.

[10] Provisions include the retention or restoration of a natural vegetative buffer in the shoreline frontage to protect:

- riparian and littoral zones and associated habitat
- prevent erosion, siltation and nutrient migration

- maintain shoreline character and appearance
- minimize the visual impact of development

[11] Mr. Clendening spoke to Waterfront Building Design policies which address the relationship between built form, nature and the lake. He stated that buildings within the Waterfront will be designed and constructed to blend in to the natural environment and “preserve historic architectural characteristics of the lake.” He referred to OP policies including Waterfront Landscape, Natural Area Design and Tree Preservation which address, among other considerations, the importance of built form and vegetative buffers which will promote a lake environment that is pleasant, natural and attractive to the community.

[12] Mr. Clendening highlighted s. 4.4 which states that “the minimum setback is 23 metres for buildings and structures... for a lot in existence on the date of approval of this Official Plan.” In cases where these setbacks are not achievable, the OP provides that the greatest setback possible is required.

[13] Mr. Clendening submitted that the Township’s OP requires shoreline development and redevelopment to be respectful of the natural character of the shoreline areas and provides strong direction for development to take place away from these areas in order to protect the environmental features such that redevelopment can integrate positively in a respectful and sustainable manner.

[14] It was Mr. Hughes submission that there are no trees affected by the proposed renovations. Photographs of the property showed a well treed shoreline with the majority of the cottage screened from view from the waters edge. The area immediately in front of the cottage (lakeside) is grassed.

[15] There was some disagreement whether a single tree, near the dwelling would require removal. It was submitted by the Applicants that this is a Manitoba Maple and even if it requires removal it could be considered “a big weed”.

[16] The Board finds that while the OP clearly intends to protect the waterfront, it is also sensitive to constraints on lots created prior to the current OP. The Board heard evidence and concurs with evidence and submissions that this development will not have an adverse impact on the vegetative buffer along the shoreline.

Zoning By-law

[17] Mr. Clendening stated that the primary purpose of the ZBL requirements for shoreline areas is to help maintain a healthy shoreline while supporting site alterations which respect the character of the shoreline areas and recognize existing development patterns. He stated that the ZBL recognizes that some development as a result of site constraints will have to take place nearer to the shore than otherwise desirable, but that it should be limited to the greatest extent possible.

[18] The Applicants provided photos of other cottages in the area (Exhibit 1, Tabs 15 and 18). The evidence shows that the proposed development is consistent, and in fact more modest and more protective of shoreline vegetation than these neighbouring developments. Mr. Clendening acknowledged that there is an extensive vegetative buffer on the Applicants' property and that it has maintained a natural shoreline.

[19] The Board finds that the proposed development is meeting with the general intent and purpose of the ZBL in that it is not impacting the natural shoreline area and is in keeping with the existing development patterns.

Desirable and Minor

[20] Mr. Clendening acknowledged that no neighbours had expressed concern with the proposed variances. He submitted that the expansion would establish a dominant built-form facing the water. The Board heard no evidence that supported this position. In fact, the photos of the lot and the proposal plans suggest that this will maintain the "cottage" appearance of the dwelling and will be far less imposing than other dwellings in the area.

[21] Further Mr. Clendening stated that the encroachment towards the water is not minor in its impact. As part of the review process, Mr. Clendening received comments from Jon Orpana with the Ministry of the Environment and Climate Change (“MOECC”) who indicated that:

... [the MOECC] recommends a minimum 30 metre setback from the high water mark of water bodies is a standard in local Official Plans and related ZBL[s]. In the case of existing lots of record, the 30 m setback is a minimum; if the lot cannot accommodate the setback due to physical or topographical constraints development should be as far back from the high water mark as can be accommodated

[22] While Mr. Orpana provided comments on the Applicants’ application expressing concerns about the potential for further erosion of shoreline vegetative buffer, Mr. Clendening stated that Mr. Orpana had no photos of the property which showed the existing conditions at the shoreline.

[23] The Board heard evidence that no vegetation (other than landscaped grass and possibly a Manitoba Maple) may be removed and that most notably the vegetative buffer at the waters edge would be untouched. The Board finds that the variances are minor and that they are a more appropriate means of obtaining a more modern cottage than other options available; as such it represents good planning.

CONCLUSION

[24] Having heard the submissions and evidence of the parties, it is the Board’s opinion that the requested variances will meet the four tests under s. 45(1) of the Act. The Applicants are seeking a relatively small addition that will result in a dwelling that remains modest in size compared with other cottages in the vicinity and therefore will not create a new situation that is out of character. The evidence before the Board suggests that there will not be any disruption to the vegetative buffer at the waters edge which is an important consideration from both an OP and ZBL perspective. There may be some minor loss of vegetation in the setback from the shoreline but this would be limited to a grassed area and potentially a single low value tree. There will not be a notable increase in visibility of the cottage from the water. Further, the OP, the ZBL and even the MOECC

recognize that there may be circumstances in which a reduction in the shoreline setback is required due to lot constraints. This addition, even with the requested variances is preferable from a “good planning” perspective compared to other alternatives that were suggested by Mr. Clendening such as rebuilding the entire cottage or replacing the existing septic bed and expanding on the landside of the cottage. The Board concludes that the four tests under s. 45(1) of the Act are met.

ORDER

[25] The Board orders that the appeal is allowed and that the variances to the Zoning By-law No. 06-10 to permit a front yard setback of 19.5 m and a maximum lot coverage of 16.6% are authorized.

“L. M. Bruce”

L. M. BRUCE
MEMBER

If there is an attachment referred to in this document,
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Ontario Municipal Board

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