

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 16, 2016

CASE NO(S): PL150958

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

Applicant and Appellant:	Robert Hill
Subject:	Minor Variance
Variance from By-law No.:	2005-6
Property Address/Description:	Con 2 PT Lot 24; Part 1 to Part 4, Otter Lake
Municipality:	Township of Rideau Lakes
Municipal File No.:	A-18-2015
OMB Case No.:	PL150958
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OMB Case Name:	Hill v. Rideau Lakes (Township)

Heard: February 25, 2016 in Rideau Lakes, Ontario

APPEARANCES:

Parties

Robert Hill

Township of Rideau Lakes

Counsel

R. Aburto

T. Fleming

Participant

Gail Tucker-Thain

DECISION DELIVERED BY R. G. M. MAKUCH AND ORDER OF THE BOARD

[1] The Applicant/Appellant proposes to convert the second storey, 62.4 square metres (“m²”) of an existing accessory structure (garage) to be utilized for human habitation and requires the following variances in order to proceed:

- Section 3.1.1 - Relief to allow the 62.4m² second storey of a structure accessory to a residential use to be used for human habitation.
- Section 3.13.2 - Relief to allow the 62.4m² second storey of a structure accessory to a residential use to be used for human habitation.
- Section 5.2.2 - Relief of 0.5 m from the required 6.0m interior side yard setback to allow for a 5.5m interior side yard setback for the 62.4m² second storey of a structure accessory to a residential use to be used for human habitation.

[2] His application was refused by the Committee of Adjustment resulting in this appeal.

[3] To succeed, an applicant for authorization of variances must satisfy the Board that the four tests set out under s. 45(1) of the *Planning Act* (“Act”) are met by the application. The four tests require the applicant to satisfy the Board that the variances:

- 1) maintain the general intent and purpose of the official plan;
- 2) maintain the general intent and purpose of the zoning bylaw;
- 3) are desirable for the appropriate development or use of the land building or structure; and
- 4) are minor.

[4] The evidence before the Board in support of the appeal consists of the testimony of Michael Wright, the land use planning consultant for the Applicant/Appellant.

[5] The evidence in opposition to the appeal consists of the testimony of Brittany Mulhern, the Manager of Development Services for the Township.

[6] The Board also heard the testimony of Gail Tucker-Thain, who owns the property at 20 Frayn Road, adjacent to the subject property.

[7] It is noted at the outset that the subject building has been constructed since approximately 2005 and that there is no issue as to the variance sought with respect to s. 5.2.2 - Relief of 0.5 m from the required 6.0 m interior side yard setback to allow for a 5.5 m interior side yard setback for the 62.4 m² second storey of a structure accessory to a residential use to be used for human habitation.

[8] The Board has carefully considered all of the evidence as well as the submissions of counsel and finds that the appeal should be dismissed for the reasons that follow.

[9] The Board is not satisfied based on the evidence before it that the four tests under s. 45(1) of the Act have been met.

[10] Section 3.1.1 of Zoning By-law 2005-6 ("ZBL") provides as follows:

- 3.1 Accessory Uses
- Except as otherwise set out in this section, accessory uses, buildings or structures shall be permitted in any zone, provided that:
 1. Accessory buildings or structures other than sleeping cabins shall not be used for human habitation, except as specifically permitted elsewhere in this By-law.

[11] Section 3.13.2 provides as follows:

- 3.13 Occupancy Restrictions
- None of the following shall be used as a dwelling or for the purpose of human habitation:
 2. Any marine facility or building or structure accessory to a residential use, other than a sleeping cabin;

[12] A "sleeping cabin" is defined as follows: under the by-law:

shall mean a single storey building which provides accessory sleeping accommodation and which may contain washroom facilities but which shall not include a kitchen or other food preparation facilities.

[13] A “sleeping cabin” is limited to a maximum floor area of 25 m² inclusive of any attached decks pursuant to s. 3.1 6.1 of the ZBL.

[14] The thrust of Mr. Wright’s evidence is that the garage is some 300 feet from the waterfront, that there is no relief being sought to any of the required setbacks and that these variances should be authorized because allowing the 62.4 m² second storey of the garage to be used as a sleeping cabin will have much less impact on the neighbourhood than the construction of a 25 m² one-storey sleeping cabin. He maintains that the construction of a fourth building would have much greater impact on the surrounding area than authorizing the applied-for variances.

[15] The evidence showed that a “sleeping cabin” as defined under the by-law could be constructed without the need for any variances to the required setbacks.

[16] Firstly, the Board is not satisfied that the variances meet the general intent and purpose of the Official Plan (“OP”), which designates the subject property as “Rural”. Residential uses in the “Rural” designation are generally restricted to single dwellings developed on the basis of one dwelling per lot. Authorizing these variances would amount to allowing another single dwelling on the property. The intent of the Official Plan is quite clear that human habitation is not to be allowed in accessory buildings or structures given that s. 2.8.1 of the OP provides that “No boathouse or other marine structure shall contain a dwelling unit or any facilities for human habitation.” Permitting such a use could not be said to meet the intent and purpose of the OP.

[17] Secondly, with respect to the zoning by-law, the Board is also not satisfied that the application meets its intent and purpose. The by-law specifically prohibits the establishment of residential uses in accessory buildings other than in a single storey “sleeping cabin” having a maximum floor area of 25 m². Authorizing the 62.4 m² second storey of a garage to be used for residential purposes would not meet this intent.

[18] Thirdly, the Board is not satisfied that the variances sought are minor. The order of magnitude of the increase in the maximum floor area for a “sleeping cabin” is two and

one half times what is permitted under the by-law. The Applicant/Appellant has not provided the Board with any evidence that there would not be any adverse impacts on the septic system resulting from this conversion.

[19] Finally, for all of the above reasons, the Board is not satisfied that the variances sought are desirable for the appropriate development of the property as the intent of the by-law is to ensure that human habitation is restricted to main dwellings with limited accessory sleeping accommodations through a sleeping cabin having a maximum ground floor area of 25 m². It would not be appropriate to allow the conversion to take place.

[20] It is noted that the owner applied for a zoning by-law amendment to permit this second storey of the garage to be used for human habitation circa 2007. The application was refused by Township Council. The decision was appealed to this Board but later abandoned.

[21] Accordingly, the appeal is dismissed and the variances applied for are not authorized.

“R. G. M. Makuch”

R. G. M. MAKUCH
MEMBER

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Ontario Municipal Board

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