

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



**ISSUE DATE:** March 31, 2016

**CASE NO(S):** PL151028

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

Appellant:	Clifford Lowery
Applicant:	James Gray
Subject:	Minor Variance
Variance from By-law No.:	06-650
Property Address/Description:	26 Island 1200
Municipality:	Temagami
Municipal File No.:	M-15-04
OMB Case No.:	PL151028
OMB File No.:	PL151028
OMB Case Name:	Lowery v. Temagami (Municipality)

**PROCEEDING COMMENCED UNDER** subsection 45(17) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Motion By:	James Gray
Purpose of Motion:	Request for an Order Dismissing the Appeal
Appellant:	Clifford Lowery
Subject:	Minor Variance
Property Address/Description:	26 Island 1200
Variance from By-law:	06-650
Municipality:	Temagami
Municipal File No.:	M-15-04
OMB Case No.:	PL151028
OMB File No.:	PL151028

**Heard:** March 18, 2016 in Temagami, Ontario

**APPEARANCES:****Parties**

James Gray, Jack Gray and  
Jeffrey Gray

Clifford Lowery

**Counsel**

A. Anderson

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. G. M. MAKUCH ON  
MARCH 18, 2016 AND ORDER OF THE BOARD**

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[1] The Applicants, James Gray, Jack Gray and Jeffrey Gray wish to convert an existing cottage to a sleeping cabin with bathroom and kitchen facilities, connected to the same sewage disposal system as the main dwelling, which will be constructed.

[2] They applied for and received authorization for the following variances from the Committee of Adjustment ("Committee"):

- 1) to permit the conversion of an existing dwelling unit to a sleep cabin that is in excess of the permitted maximum area for a sleep cabin
- 2) to permit the sleep cabin to contain both a bathroom and kitchen facilities that will be connected to the sewage disposal system for the main dwelling.

[3] The authorization was subject to the following conditions:

- a) that the minor variances pertain only to the requests as submitted with the application
- b) that the property owners enter into a Site Plan Control Agreement for the subject lands
- c) that the applicants minimize any vegetation removal during construction

- d) that the Timiskaming Health Unit provides to the municipality confirmation of approval of the plans for the septic system to service the main dwelling and the sleep cabin.

[4] This authorization was appealed by Clifford Lowery, who purports to be a former member of council for the Municipality of Temagami, and as such knowledgeable respecting planning issues in the municipality.

[5] It must be noted that an appeal to this Board pursuant to s. 45 of the *Planning Act* ("Act") is a hearing *de novo* and the onus of establishing that the four tests under s. 45(1) of the Act have been met remains on the applicants notwithstanding that the Committee approved the application. The four tests under s. 45(1) of the Act, require the applicants 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

[6] The Applicant, James Gray brings this motion pursuant to s. 45(17) of the Act for an order of the Board dismissing the appeal without a full hearing on the grounds that:

- 1) The appeal does not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal.
- 2) The Appeal is not made in good faith.

[7] The evidence before the Board on this motion consists of the following:

- 1) the Applicant's Motion Record including the affidavit of James Gray, sworn February 29, 2016
- 2) the Appellant's Response to Motion dated March 15, 2016
- 3) the affidavit of Jamie Robinson, sworn March 17, 2016

[8] The Board has carefully considered the evidence as well as the submissions of counsel and finds that this motion should succeed for the reasons that follow.

[9] The Board notes that Mr. Lowery's appeal does not provide much information as to the grounds for the appeal other than referring to some specific sections of the municipality's Official Plan ("OP") and Zoning By-law ("ZBL"). He also indicates that he did not intend to call any witnesses at a hearing before the Board.

[10] Mr. Lowery attended the Committee meeting where the application was considered but did not make any submission as he was late arriving. There is no evidence before the Board that he made any attempts to make any submissions at the meeting respecting this application. The minutes of the meeting did not indicate that he was present at the meeting. He also did not provide any written submissions.

[11] His appeal cites one section of the OP and three sections from the municipality's ZBL with no other comments or submissions. There is a wealth of jurisprudence from the Board to suggest that such an approach is not sufficient for the purpose of filing a valid appeal before this Board. Allowing this matter to go to a full hearing before the Board would serve no useful purpose and would be a waste of the Board's time. It is not sufficient to merely raise apprehensions in an appeal. The planning issues raised in an appeal have to be worthy of adjudication and the responsibility falls on the Appellant to demonstrate through his conduct in pursuing the appeal including the gathering of evidence to make his case that the issues he has raised justify a hearing. While the appellant here says he has consulted with various professionals, he has failed to

provide the Board with any cogent evidence upon which the Board could rely to satisfy onus.

[12] Mr. Lowery readily admits that he was not prepared for either a full hearing of his appeal or for the hearing of this motion. It is evident that he has not taken his responsibility as an appellant very seriously and may be the victim of bad advice from those he consulted with respecting his appeal.

[13] The Board is therefore satisfied based on the affidavit evidence of Jamie Robinson and James Gray as well as the Appellant's own submissions that it should issue an order dismissing the appeal without holding a full hearing.

[14] The Board is satisfied that the four tests under s. 45(1) of the Act have been met by this application and that the variances should be authorized for the reasons that follow.

[15] Attached to Mr. Gray's affidavit, sworn February 29, 2016, is the planning report prepared by Mr. Robinson, a professional land use planning consultant, who advised the approval authority that in his opinion the four tests set out under s. 45(1) of the Act were met by this application and recommending approval of the variances. The Board relies on Mr. Robinson's report in arriving at its decision. Section 2.1 of the Act requires the Board when it makes a decision under the Act that relates to a planning matter, it shall have regard to the decision of the approval authority and to any supporting information and material that the approval authority considered in making the decision.

[16] The Board also relies on the affidavit of Mr. Robinson, sworn March 17, 2016.

[17] The lot has an area of 0.47 hectares and 327 meters (1,072 feet) of shoreline. There are currently a cottage, boathouse and three other accessory buildings (one outhouse and two sheds) on the property.

[18] The converted sleep cabin would have a maximum area of 81 square meters (“sq m”), whereas the ZBL maximum permitted gross floor area is 72 sq m.

[19] The maximum permitted lot coverage under the ZBL is 8% and would increase to 6.4% if the variances were authorized and the new cottage was constructed in accordance with the plans submitted to the Committee.

[20] The Board also notes that the Committee received a written submission from the Temagami Lakes Association, which did not have an objection to the application.

[21] The Board is satisfied that the variances sought meet the general intent and purpose of the OP, which designates the subject lands as “Special Management Area – *Remote Residential*”. Mr. Robinson opines that the relevant policies under this designation permit sleep cabins to have bathroom and kitchen facilities subject to having an approved connection to an independent on-site sewage disposal system. The policies also provide that there be an appropriate separation between the sleep cabin and dwelling and Mr. Robinson advise that such is the case here.

[22] With respect to the ZBL, the Board is also satisfied that the variances meet its intent and purpose. The subject lands are zoned “Remote Residential (R1) and the Board notes that this zone permits sleep cabins and sleep cabins with bathroom and/or kitchen facilities. The variance for the additional 9 sq m is appropriate according to Mr. Robinson, who does not see any further impacts on the shoreline.

[23] Section 6.41 c) permits a maximum of two sleep cabins on lots that are greater than 0.4 hectares.

on any residential lot existing on the date of passing of this By-law greater than four tenths (0.4) hectares in size in the SMA, IMA, R1, R2 and R3 Zones and any residential lots created after the approval of this By-law in the R1, R2 and R3 Zones, one (1) main dwelling unit and a maximum of two (2) sleep cabins are permitted, in accordance with the provisions of this Section.

[24] Section 6.41 d) restricts the size of sleeping cabins to 72 sq m for the first sleeping cabin and 36 sq m for the second sleeping cabin (where permitted).

[25] Section 6.41 e) identifies that on lots greater than 0.4 hectares that one sleeping cabin may have a bathroom or kitchen facilities. The second sleeping cabin is not permitted a bathroom or kitchen facilities. It reads as follows:

on a lot greater than or equal to four tenths (0.4) hectares in the R1 Zone and R2 Zone, one (1) sleep cabin may have bathroom or kitchen facilities, where the sleep cabin is connected to the water supply and/or sewage disposal system of the main dwelling on the lot and subject to the other provisions of this By-law while the second sleep cabin, where permitted shall have neither bathroom nor kitchen facilities.

[26] In considering the definitions of a dwelling unit and a sleep cabin, and the permission in s. 6.41 of the ZBL to have a sleep cabin with both a bathroom and kitchen facilities, it is clear that a sleeping cabin can contain both a bathroom and kitchen facilities and not be a dwelling unit.

[27] The Board is also satisfied that the variance is desirable for the appropriate development of the property, which is currently use for recreational purposes and the variances will permit the continued use without affecting the shoreline according to Mr. Robinson's evidence.

[28] The Board is satisfied that the variances sought are minor in that these will not cause any undue adverse impacts on the immediate area or on Temagami Lake in general.

[29] Accordingly, the appeal is dismissed without holding a full hearing and the variances are hereby authorized. This authorization is subject to the same conditions that were imposed by the committee.

[30] Counsel for the Applicants seeks a cost award in the amount of \$2,000 against the Appellant as compensation for bringing this motion resulting from the Appellant's conduct throughout.

[31] The Appellant has admitted that he was ill prepared for this motion as a result of bad advice from the professionals he consulted with in filing his appeal and his lack of preparation for the hearing of this motion. He offered his apologies and feels he has been chastened and that the awarding of cost in the amount of \$2,000 would be harsh on him given his lack of experience in matters such as this.

[32] While the Board finds the amount claimed for costs to be quite reasonable, it is not prepared however to exercise its discretion to award the full amount claimed, Mr. Lowery, who is a former member of municipal council readily admitted that he had been responsible in such a capacity to prepare for and appear before the Board in various proceedings for the municipality. It was clear from his submissions that he was not a neophyte in relation to the Board's process and that he demonstrated a somewhat cavalier approach in this proceeding. The Board therefore finds that the Appellant should be responsible in some way to the Applicants for the costs they incurred in bringing this matter to an end.

[33] The Board hereby orders the Appellant to pay the amount of \$500.00 forthwith to the Applicants as part compensation for the costs they incurred in this proceeding.

*"R. G. M. Makuch"*

R. G. M. MAKUCH  
MEMBER

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please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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