

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 17, 2016

CASE NO(S): PL151085

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

Appellant:	Mike Kilby
Applicant:	Eleftherios Enepekides
Subject:	Minor Variance
Variance from By-law No.:	2005-6
Property Address/Description:	241 Carleton Street
Municipality:	Township of Rideau Lakes
Municipal File No.:	A-21-2015
OMB Case No.:	PL151085
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OMB Case Name:	Kilby v. Rideau Lakes (Town)

Heard: February 26, 2016 in Rideau Lakes, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Mike Kilby

Self-represented

Eleftherios Enepekides

Steven Sheppard*

**MEMORANDUM OF ORAL DECISION DELIVERED BY R.G.M. MAKUCH ON
FEBRUARY 26, 2016 AND ORDER OF THE BOARD**

[1] The Applicant, Eleftherios Enepekides, applied for and received the authorization for the following variances from the Committee of Adjustment (“Committee”) for the Township of Rideau Lakes:

- Section 11.1.2 — Relief of 1.1 m from the required 6 m interior side yard setback to allow for a 4.9 m interior side yard setback for the proposed 374 sqft side addition.
- Section 11.1.2 — Relief of 3.65 m from the required 6 m interior side yard setback to allow for a **2.34 m** interior side yard setback for the proposed 180 sq. ft. rear addition.
- Section 11.1.2 — Relief of 3 m from the required 6 m Interior side yard setback to allow for a 3 m interior side yard setback for the main dwelling.
- Section 3.17.3 — Relief of 1.2 m from the required 3.0m interior side yard setback to allow for a 1.8 m interior side yard setback for the 900ft² (garage) accessory structure.

[2] These variances were required to bring into conformity the construction of a 34.8 square metre (“sq m”.) (374 sq. ft.) side addition and 16.8 sq m (180 sq. ft.) rear addition to an existing 254 sq m (2,733 sq. ft.) dwelling. He has also constructed a 83.7 sq m (900 sq. ft.) accessory structure with loft (140 sq. ft.).

[3] This authorization was appealed by Mike Kilby who owns the abutting property at 263 Carleton Avenue.

[4] 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 (“OP”)
- 2) maintain the general intent and purpose of the Zoning By-law (“ZBL”)
- 3) are desirable for the appropriate development or use of the land building or structure and
- 4) are minor.

[5] The only professional evidence before the Board consists of the testimony of Tracy Zander, the land use planning consultant for the Applicant as well as that of Brittany Mulhern, the Manager of Development Services for the Township, who gave evidence under summons issued by the Board at the request of counsel for the Applicant.

[6] The Board also heard the testimony of the Applicant, Mr. Enepekides and Scott Blair, the Applicant's contractor.

[7] The Appellant, Mr. Kilby testified in support of his appeal.

[8] The Board is satisfied based on the uncontradicted professional evidence of Ms. Zander and Ms. Mulhern that the four tests set out under s. 45 (1) of the Act have been met by this application and that the appeal should be dismissed for the reasons that follow.

[9] It is noted that these buildings and structures were already constructed following approvals by the Township. These approvals were however based on a faulty survey. A more recent survey obtained by the Appellant showed that the structures were closer to the side lot line than what was indicated on the previous plans, which had been based on the faulty survey. The variances sought herein would remedy the problem.

[10] Mr. Kilby did not proffer any cogent evidence upon which the Board could rely to allow his appeal.

[11] Firstly, the Board is satisfied that the variances sought meet the general intent and purpose of the OP, which designates this property "Rural", a designation that permits single detached dwellings on the basis of one house per lot with permission for accessory buildings and structures. The variances if authorized, would maintain the rural and recreational flavor of the Township according to Ms. Mulhern. There is also no

issue as to the compatibility with the surrounding properties or the lake and the property is not subject to a "Natural Heritage" designation.

[12] Secondly, the Board is also satisfied that the variances meet the general intent and purpose of the ZBL and notes that the property is zoned "Rural" (RU). The intent of the side yard setback provisions is to implement the land use compatibility aspects of the OP according to Ms. Mulhern and there are no buildings or structures immediately adjacent to the structures that are the subject of the variances.

[13] Thirdly, the Board is also satisfied that the variances are desirable for the appropriate development of the property, as these are compatible with the surrounding development and blends well with the natural environment according to Ms. Mulhern, who requested that the Committee impose a number of conditions on any authorization by it. It is noted that the authorization granted by the Committee was subject to a number of conditions relating to the implementation of a vegetative buffer along the side yard to reduce any impacts.

[14] Finally, the Board is satisfied that the variances sought are minor, in that it will not cause any adverse impacts on the residents of the area in general or on the abutting properties. The minimum interior side yards, according to Ms. Mulhern, are established primarily to provide adequate separation distance, and to ensure compatibility between abutting properties. The abutting property owned by the Appellant is also used for residential purposes and is a substantial distance from the structures subject to the variance requests. The conditions imposed by the Committee are intended to ensure privacy for the two properties.

[15] Accordingly, the appeal is dismissed and the variances are hereby authorized subject to the same conditions that were imposed by the Committee.

[16] Any request for costs shall be made in accordance with the Board's Rules.

"R.G.M. Makuch"

R.G.M. MAKUCH
MEMBER

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Ontario Municipal Board

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