

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 23, 2016

CASE NO(S): PL160328

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

Applicant and Appellant:	Maureen Van Alstine
Subject:	Minor Variance
Variance from By-law No.:	By-law No. 578
Property Address:	16 Baldwin Street
Municipality:	Township of Baldwin
Municipal File No.:	C-15-11A
OMB Case No.:	PL160328
OMB File No.:	PL160328
OMB Case Name:	Van Alstine v. Baldwin (Township)

Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: August 30, 2016 in McKerrow, Ontario

APPEARANCES:

Parties

Maureen Van Alstine

Township of Baldwin

Counsel

Mathieu Ansell

Paul Cassan

**MEMORANDUM OF ORAL DECISION DELIVERED BY JUSTIN DUNCAN ON
AUGUST 30, 2016 AND ORDER OF THE BOARD**

[1] This was a hearing in the matter of an appeal by Maureen Van Alstine (“Appellant”) from the decision of the Township of Baldwin (“Township”) Committee of Adjustment to refuse an application for a minor variance permitting a reduction in lot frontage from the minimum of 100 feet set out in Zoning By-law No. 578 at a property known as 16 Baldwin Street (“Subject Property”).

[2] Although the Subject Property is a legal non-conforming lot, a variance is necessary as a result of the Appellant’s proposal to construct a new residence on the Subject Property.

[3] At the outset of the hearing, the parties jointly requested that the Board assist to mediate a settlement of the appeal. After explaining Rule 68 of the Board’s Rules of Practice and Procedure, which stipulates that Members of the Board are not to preside at a hearing without the parties’ consent if they have previously sat as mediator, the parties consented that the Board Member sit as mediator and subsequently preside at the hearing should a settlement not be reached.

[4] After some discussion in a mediation session, the parties were able to reach a tentative settlement and the Board retired in order that Minutes of Settlement (“MOS”) satisfactory to the parties could be drafted and presented to the Board. Attachment 1 to this order are the MOS agreed to by the parties, which were presented to the Board and marked as Exhibit 5 to the appeal. The parties agreed that the variance be granted, subject to a number of conditions.

[5] Counsel for the Township explained to the Board, upon presentation of the MOS, that the conditions agreed upon by the parties are intended to address the following concerns of the Township:

- a. that a neighbour be provided with access to their property by partial removal of a fence on the Subject Property;

- b. that an assessment of potential impact to a wetland located to the rear of the Subject Property be undertaken prior to construction;
- c. that a site plan be prepared to address potential for impacts, and showing compliance with setback requirements and showing the location of a private well and additional parking spaces;
- d. that confirmation be provided that no employees will be present on the Subject Property as part of the Appellant's home occupation; and
- e. that confirmation be provided that potable water was available on site.

[6] The Board qualified Matthew Dumont, a registered professional planner, to provide expert planning evidence on consent of the parties. It was Mr. Dumont's evidence that the Appellant's residence was built in 1949 and pre-dated the Zoning By-law. He explained that the Appellant had purchased the residence in 1993 and that it had become dilapidated and was demolished in 2011. The Appellant now seeks to construct a new residence.

[7] It was Mr. Dumont's evidence that the application raises no conflict with any policies contained in the Provincial Policy Statement ("PPS"). He opined that the application, subject to the conditions agreed upon by the parties, meets the four tests of s. 45(1) of the *Planning Act* ("Act"); he opined that the application maintains the general intent and purpose of the Township's Official Plan, maintains the general intent and purpose of the Zoning By-law, is desirable for the appropriate development of the lands and is minor in nature.

[8] Having heard and considered the uncontradicted expert evidence of Mr. Dumont, on behalf of the parties, and having considered the settlement reached by the parties and the conditions agreed to therein, the Board found that the application is consistent with the PPS and meets the four tests for a minor variance under s. 45(1) of the Act.

[9] The Board ordered that the appeal is allowed and the variance authorized, subject to the conditions agreed upon between the parties contained in Attachment 1.

“Justin Duncan”

JUSTIN DUNCAN
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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Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

ONTARIO MUNICIPAL BOARD

IN THE MATTER OF an Appeal by Maureen Van Alstine pursuant to section 45(12) of the *Planning Act*, R.S.O. 1990, c.P.13 as amended, from the Committee of Adjustment decision dated February 22, 2016, released March 1, 2016, refusing to grant an application for minor variance under the Township of Baldwin Zoning By-Law 578 in respect of land at 16 Baldwin Street, more particularly described as Concession 1, Lot 7 Plan M563RP Lot 3, PCL 17491 in the Township of Baldwin

OMB Case No.:	PL160328
OMB File No.:	PL130328
Municipality	Baldwin
Municipal Number	C-15-11A
Property Location	16 Baldwin Street
Appellant:	Maureen Van Alstine

MINUTES OF SETTLEMENT

Dated: August 30, 2016

WHEREAS the Applicants are the owners of Lot 3, Plan M-563

AND WHEREAS the Applicants brought an application for a minor variance permitting a reduction in frontage requirements from the 100 foot frontage requirement set out in zoning by-law 578;

AND WHEREAS on February 22, 2016 Municipal Council denied the application for minor variance;

AND WHEREAS the Applicant has appealed the decision of Council dated February 22, 2016

The parties agree to resolve this appeal on the following basis:

1. The applicant will on or before Tuesday September 13, 2016, remove the portion of the fence presently on the driveway of the property located at Lot 4, Plan M-563 and will not obstruct the driveway currently used by Lot 4, Plan M-563. This right of unrestricted access will accrue to the benefit of the current owner of Lot 4, their heirs, successors and assigns;
2. The Applicant will provide to the Municipality a document indicating that the septic system will have no negative impact upon the adjacent wetland and fish habitat or alternatively will provide proof satisfactory to the Municipality (eg. Written report from MNR Wetland biologist etc.) that there is no adjacent wetland or fish habitat. Prior to retaining the professional to prepare the report contemplated herein, the Appellant will, in writing, propose the identity and qualifications of the individual for approval by the Municipality, also in writing, which approval will not be unreasonably withheld;
3. The Applicant will provide a site plan demonstrating the following:
 - a. That all structures on the proposed development will not cover more than 30% of the lot area including the house, garage and the entire septic system as well as any other outbuildings;
 - b. That all structures will meet the required setbacks from the lot lines shown on plan M-563;
 - c. The accurate size and location of all improvements on the property;
 - d. The distance between the high water mark and the improvements;
 - e. The type and extent of the septic system;
 - f. The location of the well or source of potable water; and
 - g. The required two parking spots to allow the intended home occupation.
4. The Applicants confirm that they will not have employees in the home occupation;
5. The Applicant will provide a certificate of water potability indicating an appropriate source of drinking water on the site;

Executed In the District of Sudbury

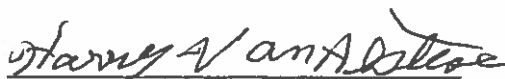
This 30th day of August, 2016



Maureen VanAlstine – Applicant



Vern Gorham – Mayor Baldwin Township



Harry VanAlstine - Applicant



Peggy Young-Lovelace – CAO, Baldwin Township