

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 03, 2017

CASE NO(S): PL170387

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

Applicants and Appellants:	Gerald Smith and Anita Smith
Subject:	Minor Variance
Variance from By-law No.:	06-10
Property Address/Description:	1211 Loucks Lane
Municipality:	Township of Minden Hills
Municipal File No.:	PLMV2016069
OMB Case No.:	PL170387
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OMB Case Name:	Smith v. Minden Hills (Township)

Heard: August 24, 2017 in Minden Hills, Ontario

APPEARANCES:

Parties

Counsel

Gerald and Anita Smith

J. Streisfeld

Township of Minden Hills

J. Ewart

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

[1] This was originally an application by Gerald and Anita Smith (the “Applicants”) for minor variances which would permit the reconstruction and expansion of their legal non-complying and non-conforming sleeping cabin located in the shoreline yard of their property on Canning Lake. The Committee of Adjustment (the “Committee”) denied the application on February 27, 2017 and the Applicants appealed the decision to the

Ontario Municipal Board (the "Board"). Since that time the Applicants revised the plans for the sleeping cabin. The modifications, the Board heard, were intended to allow the structure to comply with the zoning by-law for legal non-complying structures in the shoreline yard. The revised plans do not increase the coverage of the structure but increase the height of the structure by 0.3 metres ("m"). The Board was advised that it was the Applicants intent to comply with the Township of Minden Hills Zoning By-law No. 06-10 as amended, particularly ss. 4.7.4 which addresses legal non-complying structures, and that therefore a building permit could be issued. When the municipality would not issue the building permit they appealed the Committee's decision and modified the original proposal which was brought to the Board. The modified plans are Exhibit 4.

[2] The Board qualified professional Land Use Planner Marie Poirier who spoke in support of the application and the Township's Land Use Planner Ian Clendening.

[3] The subject property is located at 1211 Loucks Lane and has 30 m of frontage on Canning Lake. The Original Shoreline Road Allowance is closed and has been incorporated into the applicants' lot. The property has a 202 square metre ("sq m") dwelling and a two-storey 50.13 sq m sleeping cabin which has a bathroom, kitchenette and associated decking. There is also a 98.4 sq m dock attached to the cabin. The Board was provided with evidence that the sleeping cabin and associated decking dates to the 1960s. The sleeping cabin has historically served as the primary dwelling on the subject lot. The Board was provided with evidence that at one point in time, this sleeping cabin was the original cottage. There is an approved sewage disposal system on the property that serves both the sleeping cabin and the dwelling.

[4] Ms. Poirier described the subject property as well vegetated. She stated that there are two lots to the west of the Applicants which are owned by the Smiths' family members. The lot to the east is a large lot, which the Board heard was also heavily vegetated. In addition, Mr. Smith owns over 120 acres to the rear of and adjacent to all

three family lots. These lands are under the Managed Forest Program of the Ontario Ministry of Natural Resources and Forestry.

[5] It was the opinion evidence of Ms. Poirier that the revised proposal complies with the Zoning By-law provisions ss. 4.7.4 including the height increase as permitted in ss. 4.7.4. iii: which states:

Permitted Non-Complying Building or Structure: Nothing in this By-law shall prevent the reconstruction, relocation, renovation or repair of an existing legal non-complying structure on a lot provided such enlargement, reconstruction, relocation, renovation or repair does not increase the extent of non-compliance by:

- i. Increasing the lot coverage if the existing buildings or structures exceed the permitted lot coverage;
- ii. Reducing the yard between a lot line and the existing building or structure if the existing yard is less than the required yard except such yard may be reduced so long as the distance between any high water mark and the nearest part of any such building or structure is a minimum of 15 m;
- iii. Increasing the height of the building or structure by no more than 1.2 m;
- iv. Reducing the gross floor area of the existing building or structure if the existing gross floor area is less than the minimum permitted in this By-law; or
- v. Increasing the coverage of the legally non-complying building or structure by more than 25%.

[6] Mr. Clendening did not agree that the proposal complied with the requirements of ss. 4.7.4. It was his opinion that the proposed reconstruction increased the size of the sleeping cabin due to the incorporation of the area of the decks into the reconstructed building. However, it was the opinion of both planners that the August 1, 2017 revision resulted in a proposal that satisfies the requirements of s. 45(2) under the *Planning Act* ("Act"). The planners also agreed that no further notice under s. 45.18.1.1. is required. The Board has adopted the position that this matter could be heard under s. 45(2) and that no further notice is required.

[7] Section 45(2) of the Act, referencing powers of the Committee, and by extension the Board states:

(2) In addition to its powers under subsection (1), the committee, upon any such application,
(a) where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,

(i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed...continued until the date of the application to the committee, but no permission maybe given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed...

[8] Section 45(2) appeals relating to legal non-conforming structures and uses are not subject to consideration of the four-part test associated with requests for minor variances. The Board, once satisfied that the legal non-conforming use continued until the date of the application, needs to consider whether the proposal is in keeping with good planning principles.

[9] Ms. Poirier provided opinion evidence on the potential impact of the proposed reconstruction on the natural environment. She stated that the footprint of the sleeping cabin and associated decks exist and that there would not be any further site alteration. She stated that no vegetation will be removed and no site alteration is required. It was her opinion that since the sleeping cabin is not a new use, there would not be a change to the character, aesthetics or view. In fact, she stated that this sleep cabin, on the shores of the lake, was part of the historical character of the area. It was Ms. Poirier's opinion that the reconstruction of this legal non-conforming structure represents good planning.

[10] It was Mr. Clendening's opinion that the shoreline presence of the sleeping cabin is being increased in height and width. While the lot coverage is not being increased he stated that the face of the building is increasing in size and this increase creates an impact. He offered the opinion that the proposal will intensify and create a more

dominant structure since the space currently occupied by open deck will be incorporated into the sleep structure. Further, it was his opinion that mitigation measures are needed to address lighting and in the form of vegetative plantings.

[11] Mr. Clendening stated that with mitigation measures, he could support the authorization of the reconstruction in accordance with s. 45(2) of the Act. He indicated that he would like to see a condition that would address the need for a vegetative planting along the west side of the reconstructed sleep cabin. He specifically asked that this include a ten-foot strip of evergreen trees.

[12] Having heard the evidence of both planners, the Board concludes that s. 45(2) can appropriately be applied to this reconstruction of the sleeping cabin and that it represents good planning.

ORDER

[13] The Board orders that the appeal is allowed and the reconstruction of the sleeping cabin, including the extension onto the decks and the 0.3 m increase in height is permitted subject to the condition that there be a ten-foot (3.05 m) strip of evergreen trees planted and maintained on the west side of the reconstructed sleep cabin.

“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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