

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: October 5, 2017

CASE NO(S): PL170727

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

Appellant:	Town of Grimsby
Applicant:	John and Elizabeth Ricottone
Subject:	Minor Variance
Variance from By-law No.:	14-45
Property Address/Description:	52 Garden Drive
Municipality:	Town of Grimsby
Municipal File No.:	A-10/17
OMB Case No.:	PL170727
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OMB Case Name:	Town of Grimsby v. Grimsby (Town)

Heard: September 26, 2017 in Grimsby, Ontario

APPEARANCES:

Parties

Representative

Town of Grimsby

Michael Seaman

**MEMORANDUM OF ORAL DECISION DELIVERED BY RICHARD JONES ON
SEPTEMBER 26, 2017 AND ORDER OF THE BOARD**

[1] John and Elizabeth Ricottone (“Applicant”) made application to the Town of Grimsby (“Town”) Committee of Adjustment (“COA”) to permit variances in relationship to the proposed reconstruction of their home at 52 Garden Drive (“subject property”).

[2] The COA approved the variances, which involved permission for lot coverage of 32.2 percent (“%”) whereas; the Town’s Zoning By-law, By-law No. 14-45 (“ZB”) requires 25% (maximum), and a building depth of 21.4 metres (“m”) in depth, whereas; the ZB requires a maximum depth 20 m.

[3] The Town appealed the approval to the Ontario Municipal Board (“Board”).

[4] The Applicant did not appear at the hearing and the Board was subsequently advised by Michael Seaman, the Town’s Planning Director that a building permit had been recently issued for the subject property in compliance with the ZBs standards and regulations. Mr. Seaman surmised that the variances were no longer required, but the Applicant had nevertheless, not withdrawn the application nor could he be reached by Town staff to inform the Board of his intentions.

[5] The Board resumed the hearing and heard professional planning testimony from Janice Hogg, a Staff Planner with the Town.

[6] As noted, the Town had appealed the application and that decision accorded with the Planning Department’s recommendation to the COA (Exhibit 1) which had recommended against the application pursuant to s. 45(1) of the *Planning Act* (“Act”) which addresses the four tests for variances. Ms. Hogg, was the co-author of that recommendation along with the planning director, Mr. Seaman

[7] The planner opined that the application did not meet the general intent and purpose of the Official Plan (“OP”) because the proposed variances would allow a two storey home within a neighbourhood comprised exclusively of small single storey homes; a prospect, which in her view, would be contrary to the policies of the OP which require built forms compatible with the established Garden Drive streetscape. The OP requires that new development does not act as a “destabilizer” in a long established neighbourhood consisting of small, bungalows with building depths of only 10 m. More specifically, the OP requires that new development exercise a compatible relationship

with adjacent homes to ensure that the built volume of a new home conforms to the scale and appearance of adjacent housing.

[8] The planner stated that the general intent and purpose of the ZB was similarly not met, because the ZB enforces performance standards to ensure on-going neighbourhood compatibility and built-form consistency, and these objectives would not be met if the variances were to be approved.

[9] The planner was of the opinion that the variances were not desirable for the appropriate development and use of the land, because they represented a built form, “significantly out of character for the neighbourhood” (from Exhibit 1).

[10] Furthermore, the variances were not considered minor because of their capacity to convey adverse impact on a surrounding neighbourhood which is composed entirely of modestly sized bungalows.

[11] The Board relied on the uncontested planning evidence provided by Ms. Hogg and found that the variances did not meet, either singularly or collectively, the tests of s. 45(1) of the Act

ORDER

[12] The Board orders that the appeal is allowed and the variances to By-law No. 14-45 with respect to the property known municipally as 52 Garden Drive in the Town of Grimsby are not authorized.

“Richard Jones”

**RICHARD JONES
MEMBER**

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Ontario Municipal Board

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