

ISSUE DATE:

**February 06, 2013**



PL120897

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Lake Waseosa Ratepayer's Association
Applicants:	Emily Jager, Samuel Jager, Don Wright, Mary Wright
Subject:	Minor Variance
Variance from By-law No.:	2008-66P
Property Address:	844 North Waseosa Lake Road
Municipality:	Town of Huntsville
Municipal File No:	A/16/2012/HTE
OMB Case No:	PL120897
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#### **APPEARANCES:**

##### **Parties**

##### **Counsel\*/Agent**

Lake Waseosa Ratepayers  
Association

Susan Han

Emily Jager  
Samuel Jager  
Don Wright

Mary Wright

Ian Rowe\*

#### **MEMORANDUM OF ORAL DECISION DELIVERED BY COLIN HEFFERON ON JANUARY 22, 2013 AND ORDER OF THE BOARD**

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#### **BACKGROUND**

[1] Emily Jager, Samuel Jager, Don Wright, Mary Wright ("Respondents") applied for a number of variances, which would permit them to demolish an existing cottage dating from the 1930s and construct a new single-storey house with a walk-out basement ("dwelling #1") on lands municipally known as #844 North Waseosa Lake Road,

Huntsville, being part of lots 11 and 12, concession 12 in the former Township of Chaffey, now in the Town of Huntsville ("subject lands").

[2] The land is owned by Emily Jager and Don Jager and Don Wright and Mary Wright as tenants-in-common. However, the arrangement between them is that the proposed new Dwelling #1 will be owned by the Jagers and the existing dwelling, which is to be retained on the site, owned by the Wrights. On July 4, 2012, the Town of Huntsville Committee of Adjustment ("Committee") granted the following minor variances with respect to dwelling #1 and an attached garage:

1. Lot coverage of 6.3% was requested with respect to dwelling #1, whereas the Town of Huntsville Zoning By-law 74-8 ("By-law") permits maximum lot coverage of 5%,
2. A setback of 17.1 m from the shoreline was requested, whereas the By-law requires a minimum setback of 30 m.

[3] Dwelling #1, the proposed new house, will have a footprint of approximately 100 sq m. The proposed new house will occupy a lakefront property approximately 4591 sq m (1.13 acres) in area along with an existing cottage ("dwelling # 2") owned by Don Wright and Mary Wright. Dwelling #2 is not part of this application.

#### **MATTER BEFORE THE BOARD**

[4] The Lake Waseosa Ratepayers Association appealed the Committee's decision to the Ontario Municipal Board ("Board").

#### **SETTLEMENT**

[5] At the commencement of the hearing, the Board was informed that a Settlement Agreement between the two parties had been signed. The Board was also informed that it has been endorsed by the Town. The Settlement Agreement was entered to the evidence as Exhibit 2.

[6] The Board heard evidence that the requested variances had been modified slightly during the Settlement negotiations. The Board considered the amendment to the application under the provisions of s. 45 (18.1) and s. 45 (18.1.1) of the *Planning Act* and found that the amendment is minor and that further notice under s. 45 (18.1) is not required.

### **STATUTORY CONTEXT**

[7] In order for a variance from the provisions of a municipal zoning by-law to be authorized it must satisfy the four tests under s. 45 (1) of the *Planning Act*. It must conform to the general intent and purpose of both the official plan and zoning by-law for the municipality; it must be minor; and it must be desirable for the appropriate development of the property. If it fails even one of these tests, the Board must refuse to authorize it.

### **EVIDENCE AND FINDINGS**

[8] John Gallagher, who is a registered professional planner, was qualified by the Board to provide opinion evidence on land use planning.

[9] Mr. Gallagher advised that the core issue here is whether dwelling #1, the proposed new residence, should be re-built on the footprint of the demolished structure and a proposed garage built elsewhere on the property.

[10] Mr. Gallagher explained that the proposed dwelling #1 is a modest-sized home, quite in keeping with the other homes on Lake Waseosa. Because the Respondents intend to use the proposed new dwelling as their retirement home and live in it year round, the attached garage is a necessary convenience for a retired couple in Muskoka during the frigid winters experienced in the area, particularly for a retired couple. Attaching the garage to the proposed new dwelling #1 increases the coverage to 6.3%, which exceeds the permitted 5%.

[11] He testified that if the garage were constructed outside the 30 m setback from the shoreline required, a number of mature trees and other vegetation would have to be removed.

[12] He further explained that a Hydro easement across the property (as shown in Exhibit 1, Tab 17) has been moved to the edge of the property and that a new, modern septic system, which will serve both dwellings on the subject lands, will be installed.

[13] The Board accepts the uncontested evidence of Mr. Gallagher and finds that with these site improvements and with the defined 25% amenity area along the shoreline, the requested variances conform to general intent and purpose of both the Town of Huntsville Official Plan and the District of Muskoka Official Plan.

[14] Mr. Gallagher explained that the existing cottage, which the Respondents propose to replace with dwelling #1 was originally constructed 13.1 m from the shoreline. He testified that this existing cottage (as well as a large percentage of the cottages on Lake Waseosa) was built before the By-law was even enacted and well before new provincial regulations designed to protect water quality and shoreline vegetation came into effect. The Board was told that the Respondents propose to construct the new dwelling #1 some 17.5 m from the shoreline, which is 4 m further back as compared with the existing cottage.

[15] The Board accepts the uncontested evidence of Mr. Gallagher and finds that the requested shoreline setback conforms to the intent and purpose of the By-law.

[16] The Board also accepts the uncontested evidence of Mr. Gallagher and finds that the requested variances are minor both numerically and as regards potential adverse impact on surrounding properties, and that they are desirable for the appropriate development of the (subject lands).

## GENERAL FINDING

[17] The Board accepts the uncontested evidence of Mr. Gallagher and finds that the requested minor variances satisfy the four tests of s. 45(1) of the Act and that the proposed development represents good planning and is in the public interest.

## ORDER

[18] The Board accepts the Settlement Agreement.

[19] The Board orders the appeal of the Lake Waseosa Ratepayers' Association to be allowed in part. The Board further authorizes the requested minor variances for the property municipally known as #844 North Waseosa Lake Road, Huntsville, being part of lots 11 and 12, concession 12 in the former Township of Chaffey, now in the Town of Huntsville, that is, the subject lands, to permit a front yard setback of 17.5 m and lot coverage (principal) of 6.5% subject to the following conditions:

1. A Site Plan Agreement between the Respondents (that is, Mr. Wright, Ms. Wright, Mr. Jager and Ms. Jager) and the Town of Huntsville shall be concluded and registered on title to the Subject Lands which Site Plan Agreement shall include the following terms:
  - a. a defined 25% amenity area along the shoreline;
  - b. stormwater management and construction mitigation plan: and
  - c. the shoreline buffer area and riparian line zone outside the allowed waterfront activity area shall be remediated and maintained utilizing native planting.

All as shall be to the satisfaction of the Town of Huntsville.

2. The main dwelling shall be constructed as in the form of a bungalow with a walk out basement, substantially in accordance with the design, height and footprint indicated in the sketches attached to the Minutes of Settlement filed as Exhibit 2 in this Proceeding, which sketches, together with the Sketch for Site Plan Purposes dated May 29<sup>th</sup>, 2012 prepared by Tulloch Engineering found at Exhibit 2, Tab 17 in the Document Book filed as Exhibit 1 in this Proceeding, shall be incorporated into the Site Plan Agreement.

3. The second dwelling shall not expand beyond its existing height, size or footprint.
4. The Site Plan Agreement shall contain a term and condition that no private cabin (i.e. a third structure) will be permitted on the subject lands.
5. The Respondents will remove the outhouse, pump house and the one red garage that has no floor.
6. Both dwellings shall be serviced by single septic system which is incapable of being severed or separated.

"C. Hefferon"

C. HEFFERON  
MEMBER