

Sketchy Drawings and Plans are Costly

Prepared by the A.O.L.S. Public Awareness Committee

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Every time someone applies for a minor variance, that person is asking for a minor change to a municipality's zoning by-law for

rationale may have a lot to do with the uninformed anticipated cost of a drawing prepared by a professional surveyor. Such a sketch or drawing reflects the surveyor's professional opinion of the measurements and location of physical features of the key elements of the application. Applicants, their lawyers, agents and municipal officials may consider the cost of a professional surveyor's opinion to be too great when compared to the minor detail that is the subject of the application, and fee of the

out benefit of surveys and professional land surveyors, is often carried over to complex variance applications. Such applications often include significant variances in setbacks required in the zoning by-law, and measurements set out in higher order municipal and provincial policy statements. In some complex applications, applicants have had to return to the committee for a variance on the variance because they miscalculated setbacks between the structure and the property boundary. A plan prepared by an Ontario Land Surveyor may have helped the applicant avoid delays with their approval.

The main problem with sketches prepared by applicants is the discrepancy that exists between the position of a parcel laid out on the ground and the position that the owner actually wanted, or intended. The sketch would show the size of the subject parcel of land and its distance from a lot corner, or some other distinguishing feature that would determine its location. Unfortunately, these dimensions are usually the result of very poor measuring on the

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one specific application. It is a change created by circumstances peculiar to the property that prevents the owner from meeting all of the requirements of the by-law. A minor variance approval is a certificate of permission, because it allows the property owner to get a building permit (or mortgage), even though the proposal does not comply exactly with the by-law's requirements. Committees of Adjustment can vary by-law provisions relating to the land, building, or structure - or the use of the land, building or structure.

A land severance, or consent, is the authorized separation of a piece of land to form two or more new properties. Consent to sever is required if a portion of land is to be sold, mortgaged, charged or is to form part of an agreement. In addition to the division of land, the registration of rights-of-way, easements and any changes to existing property boundaries requires consent approval.

Regulations in the Planning Act detail the information that must accompany any application for a variance or consent. These include sketches or drawings to show the intent of the application. Application forms used by municipalities request scaled drawings or surveys to form part of the complete application. A request for sketches or drawings prepared by an Ontario Land Surveyor is rarely made. The

application itself. They may also think that the request is so simple that the expertise of the Ontario Land Surveyor is not required. They may decide that they can use a dated survey and overlay approximate field measurements to fulfill the municipality's requirements for a sketch. Not only is this approach risky, it is a vio-

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lation of a surveyor's copyright. These assumptions can be very costly to the public.

Committees of Adjustment most often are presented with applications from urban property owners that deal with addition of decks and porches to their houses, or sheds and pools, in their rear yards. They are asked to provide dimensions from these improvements to the rear, side and front lot lines so that the committee can decide on the merits of the application. And, just as common are applications for relief of side yard setbacks measured in centimetres to facilitate a mortgage transaction. Rarely are these applications accompanied by an up-to-date survey by an Ontario Land Surveyor. But this cavalier approach to dealing with small, precise distances with-

ground used to prepare a sketch.

In long lines considerable errors occur. Committees of Adjustment or Land Division Committees may allow small variances from the dimensions given on the sketch and in the application, but this allowance may not be enough. In the case of a severance that involves distances of 200 to 300 metres and steep grade changes that include the frontage of the parcel and distance from a lot corner, the application may be in error by several metres.

In many instances with consent applications, there is a physical feature involved such as a creek, hill or grove of trees. This is often a desired feature by a potential purchaser, and falls within the parcel of land that the applicant wishes to sever. Again, problems occur when the applicant attempts to measure the distance to the lot and its size. The applicant will show the feature on the sketch, but will fail to clearly indicate that the boundary is to be along the edge of the bush, or bank of a creek, or existing fence - and that the measurements are approximate. The instructions provid-

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ed with the application form should clearly inform the applicant that if he or she intends to have a physical feature as a limit, that the sketch should indicate this limit in graphic and written form. Indicating the physical feature as a boundary would help when discrepancies are large.

Many applicants believe that the sketch and application are not really binding. They may believe that the decision granting a severance is really the approval of their intent to create a parcel of approximately the same size and location, and that the final survey would determine the exact dimensions. Current application forms contribute to this misunderstanding. Preambles in sections describing the information to be shown on sketches generally instruct the applicants that the sketches "shall show", or "should also include". They also instruct applicants to show approximate locations. They do not say that sketches must show certain details and that measurements are to be exact measurements. The instructions leave much room for the applicant to make assumptions and create errors that may be costly to correct, and leave the impression that plans that follow will resolve any problems in distance measurements or area calculations.

Surveyors and solicitors would generally agree that approval of the final survey should be granted if the intent of the application for a consent or variance is met.

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And, it is understood that certain basic criteria should be met in the case of a consent, such as minimum frontage, or lot area as defined by the zoning by-law, or even a minimum area to support a septic tank and tile field, and well. If the final survey is unable to reflect the intent of the severance within the restrictions of the zoning by-law, a new application may be justified.

The issue of properly prepared sketches to accompany applications for variances and consents leads to the question that

remains to be answered. Should a plan of survey be required with every application for consent or minor variance? This is asked with the understanding that committee members rarely see the final survey, and decisions taken by the committee can have a significant impact on the final survey being accepted. Here are some responses to this rhetorical question.

For a minor variance, a survey should be mandatory with every application, other than minor corrections of existing structures for mortgage purposes. If the frontage or setback distance on a property is so tight that an application for minor

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variance is considered necessary for new construction, then the committee should be given an accurate plan that can verify the size of the lot, whether there is a shortage or surplus in the frontage and side yard setbacks, and existence of easements and rights of way. A survey would also reveal the location of existing property fences and adjacent buildings. A survey plan should be required to accompany variance applications where there have been numerous improvements to a property since the last legal survey. Sometimes the first (and last)

hydrants and street intersections. In some cases, a surveyor can provide a sketch based on enough field measurements and research to give accurate locations of buildings and fences, but not enough to provide a full survey. This type of sketch would cost considerably less than a full survey, but provide accurate information for decision taking.

In rural areas, if the owner is given guidance by the municipality, or its solicitor or agent to note physical features as boundaries, such as a fence line, edge of bush or creek, on both the application form and sketch – and these features are represented on the sketch as reasonable compliance with the information on the application form, then the owner should not be put to the expense of a full survey prior to receiving consent. On large rural parcels, where long distances cause measuring problems to the applicant, the sketch should clearly show intent. The involve-

ment of a surveyor to prepare such sketches would facilitate the preparation of the final plan. A surveyor would provide an unbiased opinion and credibility to the intent of the application, especially if such features as wetlands, drainage courses and variable soil conditions were issues in the application. The final plan would be acceptable if the basic intent is followed, and reinforced with a surveyor's sketch.

Application forms for minor variance and consent are far more important than they may first appear. Decisions taken by committees based on these forms, and accompanying sketches, have long-term impacts on community development and redevelopment. Decisions can have costly impacts on applicants and their representatives if the intent carried in the documents is not clearly represented on the accompanying sketches. The sketches form the basis of legal surveys that will follow consent approvals, and many approvals for variance. The services of the professional land surveyor during the application stage would go a long way to assuring that the intent in the applications is carried through to a successful transaction. Sketchy plans and surveys prepared by applicants without input from land surveyors can be costly. Professional surveyors have the knowledge and skills to protect the interests of property owners, purchasers and their agents.

