

ISSUE DATE:

Oct. 23, 2008



PL080449

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

Applicant and Appellant: Del Vezeau
Subject: Minor Variance
Variance from By-law No.: 2005-6
Property Address/Description: Con 9 Pt Lot 4 RP 28R 143; Pt 60 To 62
Municipality: Township of Rideau Lakes
OMB Case No.: PL080449
OMB File No.: PL080449
Municipal No. A-34-2007

APPEARANCES:

Parties

Township of Rideau Lakes

Del Vezeau

Counsel

T. Wilkin

DECISION DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD

Mr. Del Vezeau (the "Appellant") owns a cottage property along Troy Lake in the Township of Rideau Lakes (the "Township"). Without the requisite approvals, he built a wooden deck at the rear of his property adjacent to the shoreline of the lake. In order to legalize this situation, he subsequently applied for a minor variance seeking relief to subsection 3.26 of the Township's Zoning By-Law 2005-6 which requires a minimum water setback of 30 m for all buildings and structures but does provide an exemption for decks which are unattached to a main building and have a combined horizontal surface area of less than 14 square metres. Mr. Vezeau's deck has a surface area of 59.9 square metres. The Committee of Adjustment ("C of A") for the Township denied his application for a minor variance and Mr. Vezeau appealed to this Board.

At the outset, the Township and Mr. Vezeau requested the Board to amend the application pursuant to ss. 45 (18.1) of the *Planning Act* to include a variance to ss. 3.22 of the same zoning by-law. That section of the zoning by-law states:

“...on any lot abutting a water body and used for purposes other than a marina, a maximum of 20% or 15 m of the shoreline area, whichever is lesser, shall be occupied by marine facilities, pump houses, stairs, decks, patios, gazebos and all other accessory building and structures. For the purposes of this section, the shoreline area shall include that portion of the lot lying within 3 m of the high water mark.”

Evidence from the Township’s Planner was that the amendment was minor and that no further notice was required. The Planner further suggested that the amendment was technical in nature and would be necessary only if the Board decided to allow the appeal. Upon the unchallenged evidence of the Township’s Planner and pursuant to ss. 45 (18.1) and (18.1.1) of the *Planning Act*, the Board amended the application without further notice.

Sheldon Laidman, the Township’s municipal Planner was qualified to provide opinion evidence in the area of land-use planning. He was the only Planning witness called. He reviewed in detail the provisions of the Township’s Official Plan policies¹ and Zoning By-Law², which emphasize the Township’s goals of protecting the natural environment and preserving the natural aesthetic quality of the shoreline of the Township’s many lakes including Troy Lake where Mr. Vezeau’s cottage property is located. Mr. Laidman noted that seasonal homes were routinely being used as year-round dwellings and there was a need for the municipality to regulate and mitigate the impacts associated with such uses. Mr. Laidman indicated that the Township’s zoning by-law had been amended to address such concerns and that Mr. Vezeau’s deck was not a legal non-conforming use.

Mr. Laidman’s opinion was that Mr. Vezeau’s structure was a “deck” and not a “dock” and that this distinction was important given that “docks” were not regulated by the Township but were under the jurisdiction of any or all of the following: the Ministry of Natural Resources, Parks Canada and the relevant Conservation Authority. Further he explained that in this regard, the construction of docks, marinas, boathouses and other structures situated on the water could require separate approvals from any or all of these organizations depending on the nature of the structure.

Mr. Laidman reviewed the report he had prepared for the C of A and maintained his opinion that the variance sought did not meet the four tests enunciated under s. 45 of

¹ Specifically s. 2.2 .1, 2.2.2, 2.2.3.2.1, 2.2.3.2.4, 2.2.3.2.5, 2.6.1.2, 2.6.1.3, 2.6.1.4, 2.15.2

² Specifically s. 3.22, 3.26.2

the *Planning Act*, was not in the public interest and did not represent good planning. He maintained this opinion with respect to the proposed variances before this Board. His opinion was unrefuted and no other planning opinion was provided. Mr. Laidman reviewed each specific legislative test and concluded that the proposed variances failed each test. His opinion was that the minor variances either collectively or individually did not meet the four tests and consistent with his analysis and opinion to the Township's C of A, he recommended refusal.

Mr. Laidman had conducted site visits and had measured Mr. Vezeau's deck. The surface area was approximately 60 m² whereas ss. 3.26 of the zoning by-law permitted a 14-m² structure. Further, the deck represented 60% or 50 linear feet of an 80-foot shore lot-line, whereas ss. 3.22 permitted either 15 m or 20%, whichever was lesser. Mr. Laidman explained that the parameters of the zoning by-law recognized the need for a recreational function along the waterfront while balancing the preservation of the natural environment. He opined that the balance was achieved through the maximums outlined in the zoning regulations.

Mr. Vezeau called Mr. Bernie Muncaster who was qualified to provide expert opinion evidence as an environmental biologist. Mr. Muncaster explained that the deck had been constructed harmoniously with the natural environment and continued to provide a corridor function for smaller animals. He went on to explain that water infiltration had not been adversely impacted by the deck structure and that the vegetative zone along the shoreline had been respected. He did concede under cross-examination that there was no net environmental gain by the construction of the deck and that had vegetation been killed by its construction, there would have been an environmental loss. He explained that he had been retained after the deck had been constructed and that in his opinion, a 15 metre vegetative buffer was a reasonable requirement to protect environmental features. He concluded that removal of the deck would cause greater negative environmental impact than having it remain in its current location.

Mr. Vezeau testified on his own behalf. He explained that the deck had been built to provide a safe area for his children. He testified that in 2002 he had sought the advice from the Township's building official who had indicated that a building permit was not necessary if the structure was considered "groundcover" and was less than 24 inches in height. Mr. Vezeau began construction in 2006. Mr. Vezeau admitted that he now

appreciates a distinction between a building approval and planning approval and that he had not undertaken any further inquiry after approximately 4 years had passed since his conversation with the building official. He explained that he had been a good steward of the property and re-emphasized that the removal of the deck would cause unnecessary environmental damage.

The Board prefers the evidence of the Township and determines that the minor variances sought do not meet the legislative four tests, do not represent good planning and are not in the public interest. The Board agrees with Mr. Laidman's opinions that the proposed variances do not meet the intent and purpose of the Township's Official Plan, Zoning By-Law, and are not minor or desirable. Further, authorizing the proposed variances would have the effect of undermining the Township's goals, as articulated in its Waterfront Development Policies of the Official Plan, of preserving the natural aesthetics of the shoreline and protecting the natural environment.

While it is unfortunate that Mr. Vezeau's removal of the deck may cause further environmental damage, the Board cannot condone his actions by authorizing the requested variances. The Board encourages Mr. Vezeau, as a good steward of the property, to work co-operatively with the Township and the Conservation Authority to ensure that any environmental impact associated with the deck's removal is minimized as much as possible.

THEREFORE THE BOARD ORDERS that the appeal is dismissed and the variances are not authorized.

This is the Order of the Board.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE CHAIR