

ISSUE DATE:

January 17, 2013



PL121166

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:	Jack Miller
Subject:	Minor Variance
Variance from By-law No.:	06-10
Property Address/Description:	1069 Canuck Trail
Municipality:	Township of Minden Hills
Municipal File No.:	A-09/2012
OMB Case No.:	PL121166
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APPEARANCES:

Parties

Counsel

Jack Miller

Township of Minden Hills

E. Veldboom

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. A. SILLS ON
JANUARY 8, 2013 AND ORDER OF THE BOARD**

[1] This was a hearing by Telephone Conference Call ("TCC") with respect to an appeal by Jack Miller ("Applicant/Appellant") resulting from the refusal of the Township of Minden Hills Committee of Adjustment ("COA") to grant a minor variance in relation to his property located at 1069 Canuck Trail, in the Township of Minden Hills ("Township"). In addition to the above-named individuals, Kent Randall (Township Planning Consultant) participated in the TCC.

[2] The subject property has shoreline frontage on Davis Lake and is currently developed with a single detached dwelling, detached garage, sleeping cabin and

boathouse. The property is designated Waterfront in the Township Official Plan (“OP”) and zoned Shoreline Residential (“SR”) Zone by Zoning By-law No. 06-10 (“ZBL”).

[3] The Applicant/Appellant proposes to construct a screened porch with a deck extension onto an existing non-complying building. The existing structure is used as a recreational cottage, and does not meet the minimum front yard setback of 23 metres or the required side yard setback of 4.5 metres.

[4] Section 4.7.4 (ii) of the ZBL, limits extension or reconstruction of a legal non-complying building or structure within 15 metres of the high water mark. Accordingly, the Applicant/Appellant requires authorization of the following minor variance:

1. to permit a front yard setback of 11.6 metres, whereas a setback of 15 metres is required

[5] Mr. Veldboom advised the Board that in this instance, Township Council is supporting the Applicant/Appellant in his appeal because they believe that the COA erred in their decision with respect to this application. The existing cottage is a non-complying building and the ZBL has provisions for these structures. The relief being sought effectively amounts to approximately 2 feet, and the Township’s planning consultant recommended approval of the variance.

[6] Mr. Veldboom submitted that the COA erred by not properly vetting the application in accordance with the criteria established by s. 45 (1) of the *Planning Act*; rather, the COA appeared to be more concerned that the Applicant/Appellant had not obtained a building permit prior to commencing construction of the porch.

[7] Kent Randall, a registered professional planner, provided a planning report and opinion evidence in support of the application.

[8] Mr. Randall submitted that the subject property is adjacent to an at-capacity lake (Davis Lake) and is therefore subject to the policies of s. 4.5.2.3 of the OP. This section sets out that “existing development rights are recognized on [at-capacity] lakes”. The

proposed construction of a screened porch and deck will not include redevelopment or a change in use. With the exception of the relief being sought, the proposed development complies with all other provisions of the ZBL. Given the overall character of the surrounding area, the proposed enclosed porch and deck extension is an appropriate and desirable development of the property, and a 2-foot encroachment into the front yard will not have an adverse impact on the property or shoreline.

[9] It was his professional opinion that the proposed variance conforms to the OP and is consistent with the general intent of the ZBL. The proposal represents good planning and the variance is minor in nature. He recommended that the variance be approved.

[10] The Board adopts and relies on the planning opinion and recommendation of Mr. Randall to find that the proposed variance satisfies the criteria established by s. 45(1) of the *Planning Act*. In consideration of the evidence before me, the Board is satisfied that the variance meets the general intent and purpose of the OP and ZBL, and the relief being sought is minor and unlikely to result in any unacceptable adverse impacts.

ORDER

[11] The Board orders that the appeal is allowed and the variance to Zoning By-law No. 06-10 is authorized.

“M. A. SILLS”

M. A. SILLS
MEMBER