

ISSUE DATE:

March 06, 2013



PL121167

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:	Lorne Donaldson
Subject:	Minor Variance
Variance from By-law No.:	06-10
Property Address/Description:	1045 Whispering Pines Trail
Municipality:	Township of Minden Hills
Municipal File No.:	A-13/2012
OMB Case No.:	PL121167
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APPEARANCES:

Parties

Counsel

Lorne Donaldson

J. Streisfield

Township of Minden Hills

E. Veldboom

DECISION DELIVERED BY A. CHRISTOU AND ORDER OF THE BOARD

[1] The appeal pertains to the refusal of an application to the Committee of Adjustment ("Committee") by Lorne Donaldson, under s. 45 (2) of the *Planning Act*, for the expansion of a legal non-conforming structure, a boat dock with a boathouse built in 1959.

[2] The boat dock is founded on "cribs" which sit on the lakebed. Ice movement on the lake has damaged the structure and the owner is trying to fix the damage and also improve the utility of the facility by increasing the length of the dock by 1.2 m and by adding a modest increase in the storage area.

[3] The By-law was changed in 2008 and now prohibits exterior expansions.

[4] The property is known municipally as 1045 Whispering Pines Trail and is situated on South Lake.

[5] The hearing was conducted by Teleconference Call (“TCC”).

[6] Prior to the hearing, the Board was advised that the parties had reached an agreement and minutes of settlement containing a sworn affidavit of Heather Sadler, the Township’s planner, setting out in detail the reasons and rationale in support of the variance, were submitted.

[7] The Board relies on the affidavit evidence of the planner and the evidential testimony contained therein. It was Ms. Sadler’s opinion that:

- The requested expansion will not have a negative impact on the environment or the neighbouring properties.
- There was no apparent opposition to the proposal by neighbours.
- No permit was required for the new dock and cribs by the Ministry of Natural Resources, because the new cribs are less than 15 m².
- No new shoreline disturbance will occur as a result of the proposed structure.
- The Official Plan (OP) acknowledges that boathouses may continue to exist and be used as legal-non-conforming structures.
- The proposed expansion/enlargement would be in keeping with good planning principles and the Board may authorize the variance.

DISPOSITION

[8] Section 45 (2) appeals relating to legal-non-conforming structures, are not subject to consideration of the four-part test. The Board needs to consider only whether the proposal is in keeping with good planning principles.

[9] The Board heard submissions from Counsel for the applicant/appellant and for the Township that agreement had been reached between the parties; and the Board received minutes of settlement duly supported by expert planning opinion that the variance to expand/enlarge/rebuild a legal non-conforming structure – a dock that had been damaged by lake ice, is in keeping with good planning principles.

[10] The Board is satisfied with the photographic evidence and drawings of the proposal contained in the minutes of settlement, that the structure would have no adverse impact on the environment and it is in keeping with good planning principles.

[11] The Board will therefore authorise the variance to By-law 06-10 of the Township of Minden Hills, to permit the expansion of a legal non-conforming structure - a boat dock with a boathouse - on the property known municipally as 1045 Whispering Pines Trail.

“A. Christou”

A. CHRISTOU
MEMBER