

**Ontario Municipal Board**  
 Commission des affaires municipales  
 de l'Ontario



**ISSUE DATE:** May 27, 2014

**CASE NO(S):** PL131097

Applicant(s) and Appellant(s):	Gladys Boswell
Subject:	Minor Variance
Legislative Authority:	Subsection 45(12) of the <i>Planning Act</i> , R.S.O. 1990. c.P.13, as amended
Variance from By-law No.(s):	2006-125
Property Address/Description:	13 Barnsdale Lane
Municipality(ies):	Township of Sequin
Municipal File No. (s):	A-2013-0034-H
OMB Case No. (s):	PL131097
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**APPEARANCES:**

**Parties**

**Counsel<sup>+</sup>/Representative**

Gladys Boswell

H. Elston<sup>+</sup>

**HEARING EVENT INFORMATION:**

Hearing: Held in Sequin, Ontario on May 14, 2014

**MEMORANDUM OF ORAL DECISION DELIVERED BY M.C. DENHEZ AND ORDER OF THE BOARD**

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[1] This variance hearing was uncontested. On Lake Joseph, there are many substantial "boathouses" with upper living quarters. Some are larger than what is permitted by today's zoning – which was sometimes adopted years after these structures were built.

[2] In the Township of Sequin (the "Township"), Gladys Boswell (the "Applicant") owned one of those "non-complying" structures. She also owned the neighbouring lot to the south.

[3] In 1995, she built a boathouse originally with one storey, with no living quarters. Its dimensions complied with the then Zoning By-law Z100-78, in force at the time.

[4] In 1997, the Township changed the rules: it adopted new Zoning By-law Z200-97, which allowed upper-storey living quarters for the first time. The Applicant added such a storey in 2005, under a building permit presumably in accordance with that By-law.

[5] In 2006, the Township changed the rules again. It adopted yet another Zoning By-law, No. 2006-125. It now specified minimum sideyard setbacks that were larger – and a building width that was narrower – than the existing dimensions of the structure, which thereby became "non-complying" at that point.

[6] The Applicant also moored a boat on the south side of her boathouse, within sight of her other property. The location was under a prominent awning, called an aquadome, cantilevered southward away from the boathouse.

[7] In 2013, the Applicant proposed a boat lift apparatus, intended for the boat moored under the awning. This apparatus would comprise a pair of steel rails to suspend a boat out of the water. It would be intended to avoid wave damage (primarily from the wake of speedboats). The Ontario Municipal Board ("Board") was advised that these "boat lifts" are not uncommon in this area.

[8] However, although these devices spend much of their time underwater, By-law 2006-25 treats any "in-water shoreline structure or facility" in much the same way as a building. Since the apparatus would be within the south sideyard setback of the boathouse, the Applicant applied to the committee of adjustment ("COA") for three variances:

- (a) to reduce the sideyard setback accordingly,
- (b) to allow a corresponding increase in the "width" of the boathouse, and
- (c) to allow a corresponding adjustment in the allowable shoreline frontage.

[9] In its report to the COA, the Township planning staff recommended in favour of the three variances:

There would be no increase in boathouse massing, dock/deck area, or an increase in the total boat mooring capacity.... The reduced 7.45 metre sideyard setback is appropriate, as the neighbouring dock facility, also owned by the Applicant, would be located approximately 50 metres to the south.

[10] There was obviously no objection from the owner of the property in plain sight of the south side of the boathouse – namely the Applicant herself. There was also no objection from other nearby neighbours; and no one appeared at the meeting of the COA to oppose the applications.

[11] However, the COA received letters of opposition. One was from John Hindson, who owns property some ten kilometers away, on another lake; and his concerns were echoed by Anne McCauley, who also lives on another lake, but who wrote on behalf of the Muskoka Lakes Association, a ratepayers' organization.

[12] The COA turned down the variances, with very little in the way of written reasons. The Applicant appealed to the Board.

[13] At the hearing, the Applicant was represented by counsel, with the support of expert planner John Jackson. The Township did not attend. Although Mr. Hindson and Ms. McCauley both were sent notice of the hearing, there was no one in attendance to oppose the application.

[14] The Board has carefully considered all the evidence. The Board concludes, as the Township planning staff did (and as Mr. Jackson's expert testimony confirmed), that the variances meet the statutory criteria. The details and reasons are set out below.

[15] For variances, the criteria (often called “the four tests”) are set out at s. 45(1) of the *Planning Act* (“Act”), namely that a variance from the applicable By-law may be authorized if it is minor, desirable for the appropriate development or use of the property, and maintains the general intent and purpose of both the Zoning By-law and of the Official Plan.

[16] Mr. Hindson had clearly taken some care, in crafting a well-presented letter about visual impact, water quality, and respect for the shoreline. Ms. McCauley, on behalf of her Association, supported that position. The Board takes no issue with their vigilance, concerning this important part of Ontario.

[17] However, although there are many instances where such concerns would be justified, the Board was not convinced that they apply to the fact situation here. In terms of visual impact, and respect for the water and the shoreline:

- at present, the view is of a boat at water level, under a cantilevered awning
- under this proposal, the only change to that vista (and the waterfront) would be that the boat would be propped, instead of being at water level. It would still be under the awning, which is the more visually prominent feature

[18] The Board was not persuaded that, in this specific case, the incremental act of propping the boat under that awning would represent a significant visual digression – as viewed from the lake; and as viewed from land, the only owner within sight would be the Applicant herself.

[19] The Board is compelled to conclude that this makes the proposed variances "minor", for purposes of the Act. As for the other tests, the Board was shown no significant evidence of digression from the statutory criteria. On that account, the Board agrees with the expert opinion of Mr. Jackson, and with the Township's staff report.

#### **ORDER**

[20] The Board orders that the appeal is allowed, and the three proposed variances, to Zoning By-law 2006-125 of the Township of Seguin, are authorized as requested.

*"M.C. Denhez"*

M.C. DENHEZ  
MEMBER

#### **Ontario Municipal Board**

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