



TO: Chair Bosomworth and Members of Planning Committee

AUTHOR: Sam Soja, Senior Planner

SUBJECT: OPA 57 - By-law 2021-101, ZBA-17/21 - By-Law 2021-47, B/32-36/21/ML (DONALDSON AND SIFFT), Part of Island M2 (Meda Island), Lake Muskoka, Part 1, Plan BR-1165, (Medora), Roll #: 6-27-011

RECOMMENDATION

THAT Official Plan Amendment 57 (DONALDSON AND SIFFT), be ADOPTED by the Township through the approval of By-law 2021-101 and the record be forwarded to the District Municipality of Muskoka for approval.

THAT Zoning By-law Amendment Application ZBA-17/22, By-law 2021-47 (DONALDSON AND SIFFT), be APPROVED, subject to the following minor amendments:

- 1) That Schedule II be replaced with a revised site plan showing a revised boundary of the proposed Environmental (EP1) Zone.
- 2) That Section 2.iii) be amended to only permit the existing three land-based sleeping cabins on Retained Lot #5/Resultant Lot #6 in Application B/36/21/ML until such time as an application is filed for a Building Permit for redevelopment of the existing dwelling or sleeping cabins and thereafter only permit a single sleeping cabin, or two sleeping cabins with a combined maximum floor area of 661 square feet.

THAT Consent Applications B/32-36/21/ML (DONALDSON AND SIFFT), be APPROVED, subject to the following conditions:

- 1) That registerable descriptions (deeds) of Resultant Lots #1 - #5 and any required rights-of-way and easements be submitted to the Township along with a registered copy of the reference plan;
- 2) That a Consent Agreement with the Township under Section 51(26) of the Planning Act be entered into and registered on title, wherein the owners agree to:
 - o Implement, in all respects, the recommendations and advice of the Environmental Impact Study (EIS), dated March 2nd, 2021 and the Response

to Peer Review Comments, dated June 8, 2022, both prepared by Michalski Nielsen and Associates;

- Implement, in all respects, the Stage II Archaeological Property Assessment prepared by AMICK Consultants Ltd. dated 2020;
 - Not utilize public parking and docking facilities as the principal means of access to the Resultant Lots;
 - Demonstrate secured means of long-term mainland parking and docking access for the Resultant Lots at all times; and
 - Reduce the number of sleeping cabins to one cabin, or two cabins with a combined maximum floor area of no greater than 661 square feet;
- 3) That the Resultant Lots be made subject to Site Plan Control, should the authority to impose this process be re-instated by the Province of Ontario prior to the issuance of a consent certificate, or in the absence of Site Plan Control, that a Consent Agreement under Section 51(26) of the Planning Act be entered into as detailed in Consent Condition 2);
 - 4) That a sauna building and bedrooms in Boathouse #1 on Retained Lot #5/Resultant Lot #6 in Application B/36/21/ML be removed as intended;
 - 5) That confirmation be received that the Township is satisfied that the Resultant Lots can be serviced by individual on-site septic systems to the satisfaction of the Township and that any problems with any existing septic system be corrected to the satisfaction of the Township;
 - 6) That cash-in-lieu of parkland be dedicated to the Township in the amount of 5% of the assessed value of the five vacant Resultant Lots, or the entire lands, whichever is less;
 - 7) That a Zoning By-law Amendment be approved to rezone a portion of the subject lands from Waterfront Residential (WR3) to Environmental Protection (EP1), to define development envelopes for land-based buildings and structures (excluding sundecks) and shoreline structures, to require reductions in the number of existing sleeping cabins, and to permit a maximum cumulative dock width of 95 feet on Retained Lot #5/Resultant Lot #6 in Application B/36/21/ML; and,
 - 8) That Official Plan Amendment 57 be adopted by Township Council and approved by the District Municipality of Muskoka.

REPORT HIGHLIGHTS

This report provides an update related to Official Plan Amendment Application 57 - By-law 2021-101, Zoning By-law Amendment Application ZBA-17/21 - By-Law 2021-47,

and Consent Applications B/32-36/21/ML (DONALDSON AND SIFFT) following a decision by Planning Committee in July 2021 to defer decisions on the applications.

BACKGROUND

Purpose and Effect

The purpose and effect of the applications is to amend the Township's Official Plan to allow a fifth lot to be created on an island where access is only available by water, to re-zone part of the subject lands from Waterfront Residential (WR3) to Environmental Protection (EP1), define development envelopes for buildings and structures (excluding sundecks), and to permit/recognize certain existing habitable buildings on Retained Lot #5/Resultant Lot #6 in Application B/36/21/ML (i.e. one dwelling and three sleeping cabins), and to divide the subject property into six lots (five severed lots and one retained lot) and grant hydro easements.

Deferral

Planning Committee held a Public Meeting on July 15, 2021 and Planning staff provided an [initial staff report](#) which includes a description of the purpose and effect of the applications, a detailed planning analysis of the development proposal, and an appendix with relevant planning policies.

Prior to and at the Public Meeting in July 2021, a significant number of comments from members of the public were submitted or voiced in opposition to the applications. The predominant concerns were related to the securement of long-term mainland docking and parking facilities primarily to ensure that creation of the proposed lots would not result in additional usage of public parking, boat launches, and docks. Potential impacts on the environment were also of primary concern, including potential impacts to fish and wildlife habitat, loss of forest cover, and water quality. Increases in marine traffic and potential safety concerns, and concerns about potential increases in noise from additional residential development were also raised.

As detailed further below, the applicants have submitted a revised Lease Agreement to address mainland docking and parking concerns and the EIS has been peer reviewed to provide further confirmation of environmental compliance. With respect to concerns related to marine traffic and noise, it is noted that the docking to be established through the applications does not exceed the threshold of 15 boats/per lot that necessitates a Boat Impact Study and it is noted that the Township's Noise By-law regulates noise and complaints are investigated by staff in the Township's By-law Enforcement Division.

Subsequent to the Public Meeting and in consideration of the feedback from members of the public, Planning Committee decided to defer decisions on the applications and requested that the following requirements be satisfied prior to further consideration:

- That a Lease Agreement that secures mainland boat slips and parking spaces be submitted for review by the Township's solicitor and that any changes be made to the satisfaction of the Township;

- That the Lease Agreement secure more than one mainland parking space for each proposed resultant lot; and,
- That the Environment Impact Study (EIS) prepared by Michalski Nielsen and Associates Limited undergo a peer review by a qualified environmental consultant and be updated accordingly, if necessary.

Update

Since the time of deferral, the applicants have submitted additional documentation to satisfy the above-noted requirements requested by Committee and to address public comments. The applicants recently requested that the applications return to Committee, and that decisions be rendered. This staff report (PLAN-2023-113) provides an overview and analysis of the additional information that has been provided.

ANALYSIS

Lease Agreement

As is outlined in more detail in the initial staff report dated July 15, 2021, Policy B.5.24 d) of the Township's adopted and approved Official Plan requires adequate long term parking and docking facilities to be secured for proposed island lots where access is only available by water. Although a Lease Agreement was submitted in 2021 to address this policy requirement, Planning Committee had requested the submission of a revised Lease Agreement that includes additional details and secures more than one mainland parking space for each of the Resultant Lots. In response, the applicants submitted a revised Lease Agreement prepared by their solicitor retained to handle the matter. A draft of this Lease Agreement was reviewed by the Township's solicitor and a copy of the final executed Agreement is included in Planning Committee's Agenda Package.

The final executed Lease Agreement identifies the landlords as the owners of Mortimer's Marina and Mortimer's Point Landing. The tenants are described as the owners of the subject property on Meda Island. Certain details have been redacted to protect the business position of Mortimer's Marina and Mortimer's Point Landing.

The leased property is described as six boat slips and six parking spaces located at 1935 Mortimer's Point Road and operated as Mortimer's Marina, plus six additional parking spaces located on an abutting property at 1935 Mortimer's Point Road, operated as Mortimer's Point Landing. Thus, one boat slip and two motor vehicle parking spaces are provided per Resultant Lot. The terms of the final executed Lease Agreement also state that additional motor vehicle parking is available for rent on property adjacent to Mortimer's Marina.

The term of the final executed Lease Agreement is for five years ending on April 30, 2028 and the tenants have the right of first refusal upon expiration of the lease for the continued rental of the boat slips and parking spaces for up to three additional five year terms, for a maximum rental period of twenty years.

The final executed Lease Agreement includes provisions for the assignment of rights from the current tenants (the applicants of the planning applications and owners of the subject lands) to eventual purchasers of the proposed six Resultant Lots should the applicants wish to sell. If a lot is sold, the new owner(s) will be assigned rights to one boat slip and two parking spaces. The new owner(s) will become responsible for all annual rents and be assigned the right of first refusal for the renewal of the lease.

Although the final Lease Agreement has been executed by all involved parties, it is conditional on the approval of the planning applications by Township Council.

As per Policy B.5.24 b) of the Township's adopted and approved Official Plan, staff are satisfied that adequate long term parking and docking facilities have been secured.

Peer Review of the EIS

In 2021 an EIS, prepared by Michalski Nielsen and Associates Ltd. (MNAL), was submitted in support of the applications and Planning Committee requested that it undergo a peer review prior to further consideration. Subsequent to the deferral, staff retained Beacon Environmental (Beacon) to complete a peer review at the expense of the applicants. Beacon completed the review and submitted a letter dated November 9, 2021 which noted several issues and sought further clarification. In response, MNAL addressed all concerns in a letter dated June 8, 2022, the majority of which were addressed by providing additional clarification about completed bird surveys and by confirming that the assessment addressed relevant planning policy.

When MNAL had completed their initial assessment they had identified and delineated a wetland in the northwest portion the subject lands along the common boundary of Resultant Lots #2 and #3. Beacon noted that the delineated boundary of the wetland did not accurately coincide with the boundary of the area that was intended to be rezoned from Waterfront Residential (WR3) to Environmental Protection (EP1). MNAL addressed this concern by overlaying GPS-derived wetland boundary data onto the site plan to provide an accurate boundary for the EP1 Zone. Revised consent/zoning sketches that incorporate this new proposed EP1 Zone boundary along with revised wetland setbacks and adjusted building envelopes on Lots 2 and 3 have been submitted. If Committee is considering recommending to Council that the applications be approved, staff have recommended a minor amendment to By-law 2021-047 to replace Schedule II with an updated site plan/zoning sketch indicating the revised EP1 boundary. The sketches included in Planning Committee's Agenda Package incorporate these revisions and a comparison of the original and updated boundaries is provided in Figure 1 below.

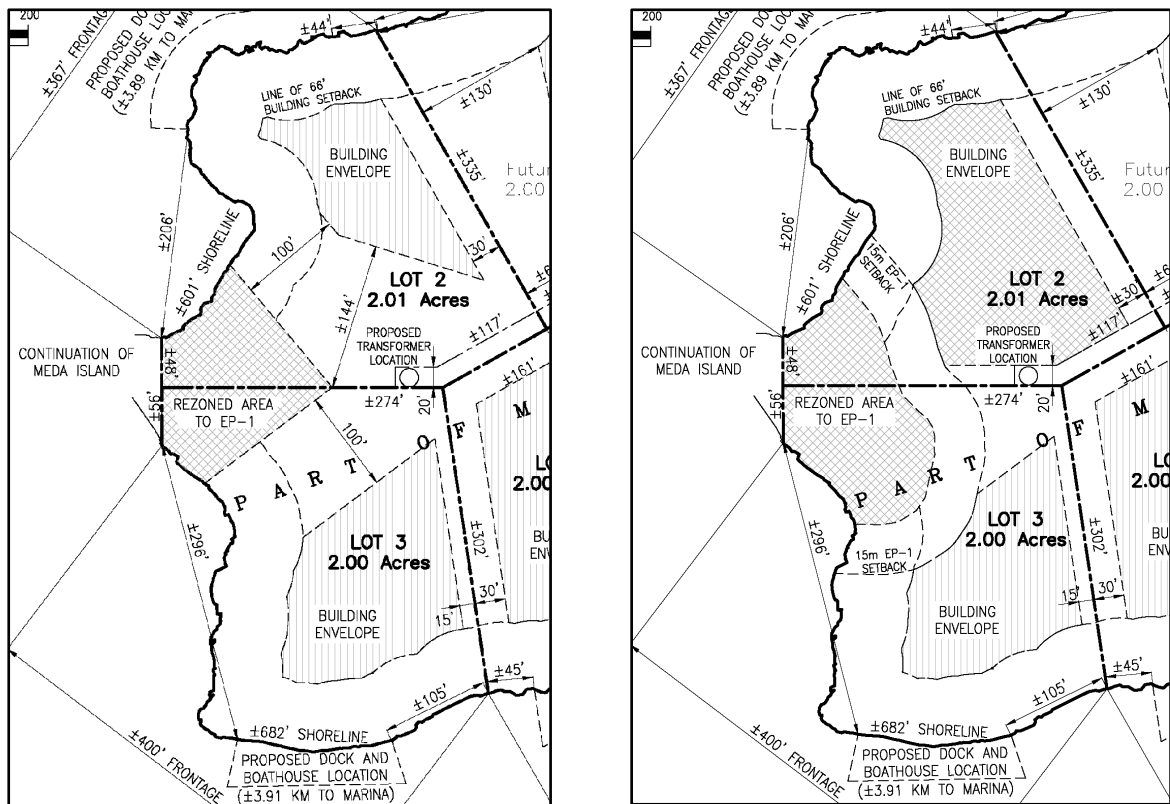


Figure 1: The sketch on the left shows the original proposed EP1 boundary and the sketch on the right shows the revised proposed EP1 boundary.

Beacon also examined the appropriateness of the proposed construction access locations for Resultant Lots #1 and #4 due to steep slopes. In response, MNAL explained how access can be accommodated and recommended that the Township's Site Plan Control process be used to have a qualified environmental consultant review development plans prior to construction. MNAL also recommended that the consultant be required to ensure that future development plans suitably address each of the recommendations of the EIS and for the consultant to attend the site with the owner and their contractor to ensure the development locations, site access, and construction mitigation are appropriate. In a letter dated July 7, 2022, Beacon confirmed that they are satisfied that MNAL has addressed all issues identified in the peer review, provided the recommendation of the EIS and peer review process are implemented.

Subsequent to the completion of the peer review process, the Township's authority to require a Site Plan Agreement in cases where proposed residential development involves 10 or fewer units was removed through the passage of the Province's Bill 23, the *More Homes Built Faster Act, 2022*. However, more recently the Province has posted for comment an intention to reinstate the use of Site Plan Control for waterfront single-family residential development. This reinstatement has not yet been completed at the time of writing.

While implementation of the EIS (and related Peer Review Comments) can be achieved through a Consent Agreement that would be registered on the title of the subject lands, staff would prefer to also implement the EIS through a Site Plan Agreement, which would

be applicable law under the Ontario Building Code. Staff have therefore recommended a condition of consent requiring the Resultant Lots to be made subject to Site Plan Control, provided it's applicability has been reinstated under the Planning Act prior to issuance of the consent certificate. Staff have also recommended that the EIS (and related Peer Review Comments) be implemented through a Consent Agreement, which will achieve the ultimate objective should site plan control not be available.

Requested Change to Recommended Conditions of Consent

Policy B.10.3 of the Township's Official Plan directs that one dwelling and one sleeping cabin shall be permitted per residential property where the lot dimensions are appropriate. In this case, Retained Lot#5/Resultant Lot #6 in Application B/36/21/ML contains four legal non-complying sleeping cabins, one of which is located within a one-storey boathouse (Boathouse #1) and is intended to be removed. The other three sleeping cabins have deficient front yard setbacks and a combined floor area of 1,256 square feet, which is approximately double the maximum permitted floor area of 650 square feet for a singular sleeping cabin. Given that the proposed severances will reduce the size of the Parent Lot, such that it would no longer be considered a 'double lot' with potential for a dwelling and sleeping cabin on each lot in the case of a future severance, staff had originally recommended a condition of consent requiring the number of sleeping cabins on Retained Lot#5/Resultant Lot #6 to be reduced to one cabin, or two cabins with a combined total floor area of no greater than 661 square feet. It is noted that this equates to the combined floor area of Sleeping Cabins #1 and #2.

The applicants recently requested that the existing sleeping cabins be permitted to remain on the property until a redevelopment plan for these existing buildings is proposed. Considering that these sleeping cabins are legal non-complying buildings, staff agree that some flexibility can be considered. While staff continue to recommend that the number of sleeping cabins be ultimately reduced, staff have recommended a minor amendment to By-law 2021-047 and a requirement through a Consent Agreement to permit the sleeping cabins to remain on Retained Lot#5/Resultant Lot #6 until an application is filed for a Building Permit for redevelopment of the existing dwelling or a sleeping cabin and that only a single sleeping cabin be permitted thereafter, or two sleeping cabins with a combined maximum floor area of 661 square feet.

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