

Northern Vision Planning

Township of Muskoka Lakes
P.O. Box 129
Port Carling, ON
POB 1J0

February 22, 2024

Attention: Mr. David Pink
Director of Development Services and Environmental Sustainability

RE: Objection to Zoning Bylaw 2023-134 (Saunders)
1151 Roberts Bay Road, Lake Joseph

Northern Vision Planning Ltd. has been retained by the Muskoka Lakes Association to provide a planning opinion on the above noted application. A Public Meeting was held in front of Planning Committee on January 19, 2024 in which the application was deferred. The MLA had submitted a Letter of Objection and requested deferral of the matter.

It is my understanding the proposal consists of an additional 1245.4 sq. ft. habitable building defined as a Recreation and Leisure Building. The subject lands are located in the Waterfront designation on Lake Joseph. The zoning of the property is Waterfront Residential (WR4).

It is my opinion there are a number of issues which arise from this application which bring into question conformity with the Official Plan, maintaining the intent of the Zoning Bylaw, and whether the application is premature. In support of this position, I cite the following matters as they relate to the Official Plan and Zoning Bylaw with appropriate comments:

1. Official Plan Does Not Support Third Habitable Building

The only habitable buildings contemplated in the Official Plan are a Dwelling and a Sleeping Cabin. Second dwellings in the form of a secondary Dwelling (in an existing Dwelling) or second Dwelling in separate structure are not permitted in the Waterfront designation. Although the application is for an Accessory Building, a third habitable building, accessory or main, is not permitted. There is no enabling policy similar to what is found in other municipal Official Plans (eg. Township of Seguin) where an additional habitable building is possible under certain circumstances.

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In the case of the use of the first storey of a boathouse, the updated Official Plan provides a policy noting the implementing Zoning Bylaw may include provisions permitting living space. No such policy has been inserted in the updated Official Plan in relationship to other additional habitable buildings. If such a policy were to be inserted, there would be the possibility of a fourth habitable building being permitted on the property - quite an increase from the current limit of two habitable buildings per lot.

It is also worthwhile noting that the Background Discussion Paper to the updated Official Plan did not specifically address additional habitable buildings as a policy initiative.

2. Official Plan Considers Compatibility With Existing Development Form

As noted in Section E 4.1 h) of the Official Plan:

h) In order to ensure compatibility with existing development, new development, **site alteration** and construction and reconstruction on existing and new lots should have a physical character similar to or compatible with existing development in terms of scale, lot sizes, maximum building heights, and minimum setbacks.

The physical character of the property, by having a large additional habitable building, is not compatible with existing development in the immediate area.

3. Official Plan Considers Cumulative Impacts of Similar Approvals

Cumulative impacts of similar approvals must be taken onto account. The Township of Muskoka Lakes Official Plan is unique in this regard due to the development pressures exerted by residents in the Township, the desire to live and recreate in the Township, as well as the extensive number of Planning Act applications processed. Allowing a third habitable building would be a dangerous precedent, the next habitable building could be a large Home Theatre building, for example, attracting numerous people to attend. Such cumulative impacts are to be given more weight than site specific impacts when evaluating applications.

4. Comprehensive Zoning Bylaw Implements Official Plan With Limitation on Number of Habitable Buildings

The Comprehensive Zoning Bylaw implements the Official Plan policies and by virtue of the Planning Act, is deemed to conform to the Official Plan. Comprehensive 2014-14 specifically limits the number of habitable buildings. This is in addition to the limit of one dwelling and one sleeping cabin per lot, which emphasises the importance of the limit of two habitable buildings per lot.

Section 3.45 is the primary operative provision in the Zoning Bylaw applying to this case. It reads as follows:

3.45 MAXIMUM TWO HABITABLE BUILDINGS PER LOT

Where the by-law permits a dwelling unit and a sleeping cabin, these shall constitute the only buildings with a habitable room permitted on the lot, excluding a Home Based Business building where permitted. An accessory structure containing a habitable room is deemed to be a sleeping cabin.

It is clear from this Section that there is to be a maximum of two habitable buildings per lot. Due to the breadth of what a structure with a habitable room could be used for, it was felt appropriate to deem them all as a Sleeping Cabin.

It is recognized that the application proposes an Exemption to this section. This does not automatically mean this Section has no relevance. Certain sections of the Bylaw must be considered very strictly in the context of the Official Plan which does not specifically authorize additional habitable buildings and there are issues of compatibility and the cumulative impact of similar approvals.

5. Enforcement

It has been known for many years that it is difficult for the Township to prevent the conversion of storage buildings to living space. By permitting such a Recreation and Leisure Building complete with interior finishes, washrooms, large windows, etc., it will be even more challenging preventing these buildings from becoming a Dwelling or Sleeping Cabin.

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6. Interim Control Bylaw

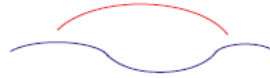
Under the Planning Act, Township can pass an Interim Control Bylaw where it feels more study is required on a certain form of development (amongst other matters). In such cases, the municipality can study the issue for a year with the possibility of a further year, if required. It is recognized that an ICBL must be carefully drafted so it does not encompass storage buildings, garages with washrooms, and other similar buildings which should otherwise be permitted in the Township. It is also noted that it may be difficult to enact such a Bylaw for a matter that is not currently permitted as of right in the Zoning Bylaw.

With that said, the Township should make every effort to explore this possibility. If a third habitable building (and possibly a fourth) is to be permitted in the future, a concurrent Official Plan Amendment and Zoning Bylaw Amendment will be required. There is the possibility that Council could pass a Resolution indicating that no additional habitable buildings (possibly including the first storey of a boathouse) will be permitted until the appropriate OPA and ZBA are approved. This at least indicates Council's intentions moving forward. This was done in the past regarding Rural lot sizes when there were no Rural policies in the Township Official Plan.

7. Could Permit Recreational Building Under Strict Criteria (lot size, building size, future severance, setbacks)

After study by the Township, a criteria could be established to permit a Recreation and Leisure Building subject to certain performance standards such as the divisibility of the lot, separation of buildings for a possible future severance, a minimum setback of 30 m. (100 ft.) and no bedrooms or a kitchen. In addition, such a building should be limited to the three large lakes where more development is expected and there are less compatibility issues. The floor area should be limited, possibly to a maximum of 92.9 sq. m. (1000 sq. ft.). In addition, an amending Zoning Bylaw needs to specify that this is an accessory use and cannot be used to justify Division of Existing Uses in the future.

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Based on the above noted information, it is my opinion the proposal does not conform to the Official Plan and is not within the intent of the Comprehensive Zoning Bylaw and should be refused. In addition, I feel the application is premature in the absence of direct policy authorization and further study by the Township.

If you have any questions regarding the above, please do not hesitate to contact me.

Sincerely,

Stephen Fahner B.A. (Hon.), A.M.C.T., CMMIII, M.C.I.P., R.P.P.