

## **MEMORANDUM**

**TO: John and Judy Burch**

**FROM: Margaret Walton**

**DATE: February 17, 2021**

**SUBJECT: Pier 100 Cottage Resort – Redevelopment Potential**

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On October 21, 2020, John and Judy Burch entered into a retainer engaging Planscape to respond to questions and concerns regarding existing and potential development on a property located at 2689 Muskoka Road 118 W in the Township of Muskoka Lakes. The property, known as Pier 100 Cottage Resort, has been operating since the early 1970's as a small housekeeping resort. It recently changed ownership and is now owned by 2784805 Ontario Ltd. The Burch's own an adjacent property and are concerned about potential impacts from any change in activity on the Pier 100 property.

Although it is unclear if the new owners will retain the name of the resort, for the purposes of this report, the subject property will be referred to as Pier 100.

Over the past number of months, Burch's have had considerable interaction with the Township regarding Pier 100. The chain of emails between the Burch's and the Township Planning Department has been reviewed as part of the research regarding this property. We concur with the Township's statements regarding the development options available to the property. Due to a lack of shoreline frontage, the resort is limited to maintaining and renovating what currently, legally exists. There are no current expansion rights associated with this property.

The only way that expansion would be possible is through an extensive approval process that would require amendments to existing policies and involve a comprehensive public process. Such an application would be carefully scrutinized with reference to long standing policies in place at the local, regional and provincial level. These policies are designed to control adverse impacts on the waterfront and on neighbouring properties. It is my opinion that an application to increase the amount of development and add additional accommodation capacity to the resort would have little, if any, potential for approval. Sufficient shoreline frontage is a rigorous requirement to support development rights, strongly enforced by the Township and the District Municipality of Muskoka. The frontage on this property is significantly undersized.

An application for a minor expansion or reconfiguration of existing gross floor area (GFA) that does not increase the intensity of use and could be adequately serviced, might be approved. Such an application could be triggered by the need to address an encroachment, to improve the spacing or orientation of units or to add recreational amenities. Addition of amenities that do not increase occupancy on the site can provide more variety of activities on a site and result in reduced use of the waterfront. Therefore, these

types of applications are sometimes viewed favourably by the municipality. Slight changes to accommodation units without increasing capacity might also be approved through the required planning process.

Regardless, any application for a minor expansion or reconfiguration would trigger extensive review and a comprehensive public consultation process to ensure neighbouring property owners are given the opportunity to express any concerns. These concerns would be considered by the approval authority (Council or the Committee of Adjustment) before a decision on any application would be made.

### **Property Background**

Pier 100 is a small resort property located on 7.2 acres. If the area of the shore road allowance, which is not in the ownership of the resort is included, the area is 7.5 acres. The shoreline frontage on Lake Muskoka is 170 feet. It is zoned Waterfront Resort Commercial "WC1" and is in the Waterfront designation under the Township Official Plan.

According to a recent Township planning report prepared in 2018, the property is developed with the following structures:

- 2 storey residential dwelling unit;
- 2 storey recreational building, the second storey of which was approved as a dwelling in 2000;
- Nine housekeeping cottages; and
- A sports court.

The total gross floor area of existing structures, according to the Township in 2018, is 9,582 sq. feet.

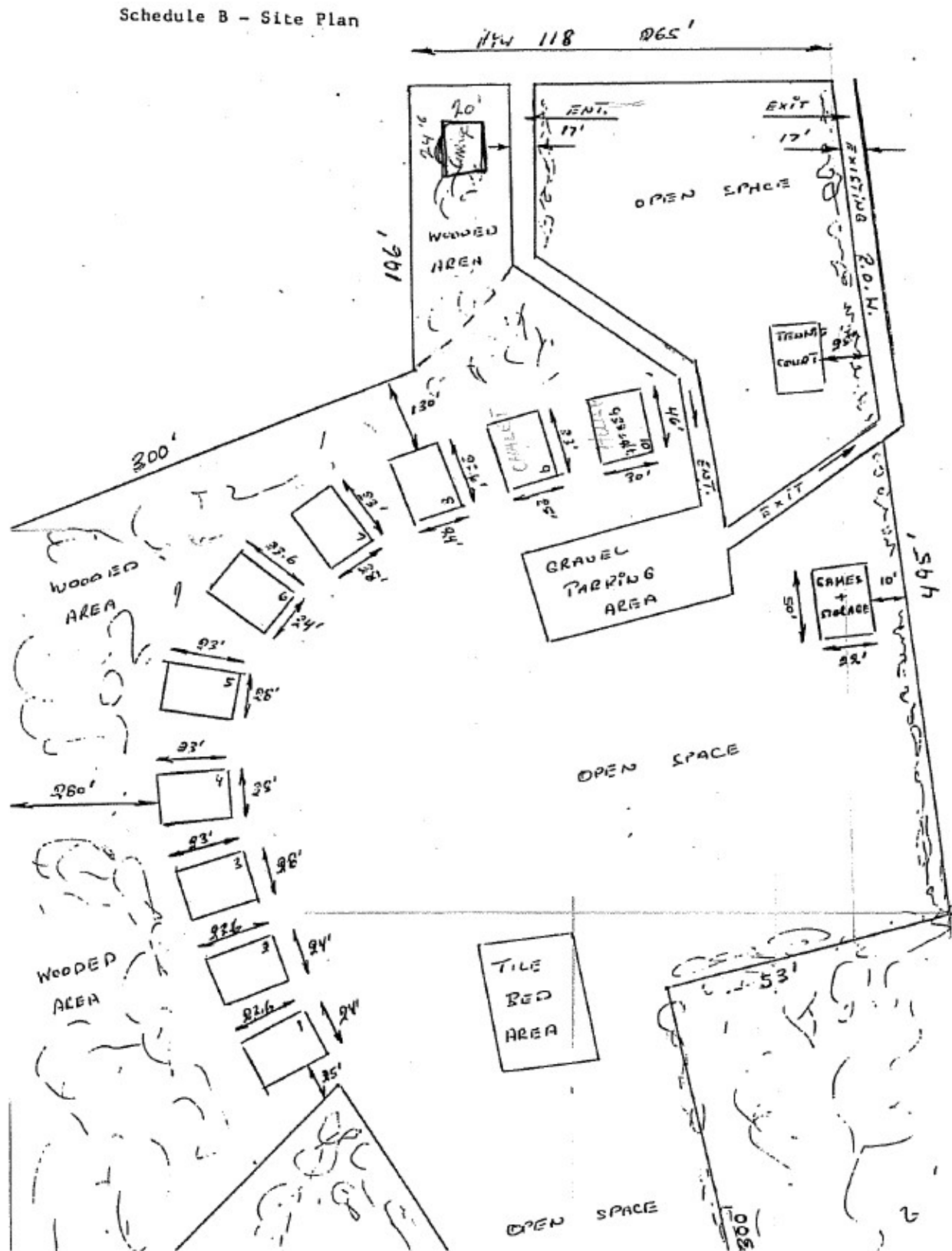
Commercial properties in the Township of Muskoka Lakes are subject to site plan control under current Township by-laws. Site plans are scaled plans showing the existing and approved development permitted on a property and are supposed to include building footprints, elevations of building design, parking, loading, access, amenities, shoreline structures, servicing (septic and stormwater managing works where required) and landscaping. These plans are registered on the title of the property as part of a site plan agreement, laying out the details of how development must proceed on a property. All development must conform to this registered agreement and plan.

We were able to secure the site plan currently registered for Pier 100. It is an old, rough, hand drawn sketch that is not to scale. A copy of the plan is provided below. This type of very rough drawing is not atypical of what is on file for long term established commercial properties in the Township. At the time the resort was developed, rough sketches were the norm.

Regarding the shoreline, we found no accurate records of what is in place for shoreline structures or when they were built. No details related to shoreline development are shown on the site plan. The picture below was taken by the Township as part of the review of a severance application in 2018. It appears to show a dock, and shoreline deck covering much of the frontage.







## Current Applicable Policies

Section B.11 of the Township Official Plan lays out the policies for Waterfront Commercial development, which includes resorts. New resorts in the Waterfront designation require a minimum area of 5 acres and 500 feet of shorelines frontage. Existing resorts that do not meet these minimum standards are allowed limited development rights to be specified in the Township Zoning By-law.

Specific policies relevant to Pier 100 include:

*B.11.4 Limited expansion, enlargement, or redevelopment of existing commercial establishments shall be permitted to approved limits detailed in the implementing comprehensive zoning by-law, as of the date of adoption of this Plan. Various zoning categories shall take into account the general differences in resorts and their densities.*

*B.11.6 Expansion, enlargement, or redevelopment of commercial establishments beyond the approved limits, as established in zoning, requires an amendment to the implementing comprehensive zoning by-law and is subject to site plan control. Consideration of proposals shall take into account the suitability of the site and the ability of the surrounding area to accommodate and sustain the expansion, enlargement, or redevelopment. Proposals shall maintain the general intent of the Plan and the following guidelines will be used in their evaluation:*

- a) the property is of sufficient dimension and size to accommodate the proposal. Specific densities will be established in the amending zoning by-law;*
- b) the proposal should blend in with the waterfront setting and terrain, taking into account such issues as slope, vegetative cover, aesthetics, compatibility, and access;*
- c) water and sewage disposal systems shall be able to handle the proposal;*
- d) access routes shall have the capacity or be upgraded to handle additional traffic; and,*
- e) the effect of the proposal would comply with the intent of any water quality policies of this Plan or the District of Muskoka Official Plan.*

*B.11.15 All resort development or redevelopment shall meet the following siting requirements:*

- a) a minimum setback of 20m (66 feet) from the normal or controlled high water mark of a waterbody for all structures except shoreline and minor non-habitable structures;*
- b) the provisions of Section 5.51; (see below)*
- c) increased setbacks related to the height of buildings shall be encouraged;*
- d) tree cover and vegetation is encouraged to uphold the visual and environmental integrity of the shoreline;*
- e) A minimum of 30 metre setback from any shoreline will be required for leaching beds. Where this is not feasible, on-site phosphorus management will be required.*



*B.11.16 New resorts shall meet the following minimum lot and siting requirements:*

- a) generous amount of open space;*
- b) on a mainland property;*
- c) a lot area of 2 hectares (5 acres);*
- d) on appropriate water supply and sanitary sewage disposal systems;*
- e) a water frontage of 150 metres (500 feet); and,*
- f) a natural buffer to ensure compatibility with adjacent residential uses.*

*B.5.51 The retention of trees and native vegetation shall be encouraged through site plan control to uphold the visual and environmental integrity of the Waterfront. Where development is proposed, a natural undisturbed buffer is required at the water's edge to generally meet a target of 15 metres (50 feet) in depth from the high water mark. Where little or no natural buffer exists, renaturalizing will be required, where possible. Minor accessory structures and an access pathway to the shoreline are permitted. 1.19 A resort will be operated under on-site central management for profit.*

Clearly, under current policies, a resort would not be permitted on the Pier 100 property. However, because the resort existed prior to these policies being enacted, it is permitted to remain, and the use may legally continue. The conditions under which it can remain are referenced in Policies B.11.4 and B.11.6 above. Specific development controls are implemented through the Township Zoning By-law.

The possibility of the property being down zoned to residential has been referenced as a way to reduce density on the site. Presently, this is not a viable option. Resort commercial properties are identified in the Township's Official Plan as "employment areas" and conversion of them to other uses is strongly discouraged. The conversion of employment areas to non-employment uses such as residential can only occur under limited circumstances.

*B.11.7 All lands upon which resorts, marinas, waterfront contractors, retail, service commercial, and/or light industrial uses are located or permitted, shall be referred to as the Employment Areas of the Township. Council recognizes that Employment Areas contribute substantially to the economic base of the Township. As such, Council supports the retention of all Employment Areas and operations in order to facilitate proper redevelopment and/or expansion. The conversion of Employment Areas to Non-Employment Areas shall be permitted through a comprehensive review, only where it has been demonstrated that the land is not required for employment purposes over the long term and that there is a need for the conversion.*

Regardless of whether the policies support down zoning or not, waterfront residential zoned lots require a minimum of 200 feet of frontage. This property does not meet the minimum standards required for a rezoning to residential.

The value in this property is based on its grandfathered status as a resort commercial property established prior to the implementation of more rigorous policies to manage resorts.



## Development Controls

The Pier 100 property is zoned WC1. The zoning provisions associated with waterfront resort commercial properties are contained in Section 4.2 of the Township's Comprehensive Zoning By-law 2014-14 which came into effect in 2015. Section 4.2.10.a specifically addresses properties zoned WC1.

### 4.2.10 SPECIAL PROVISIONS: RESORT COMMERCIAL WATERFRONT (WC1, WC1A1, WC1A2, WC1A3, WC1A4)

*The following requirements are applicable in these zones:*

- a. *For the purposes of this By-law limited development shall mean that properties zoned WC1 (undersized lots) will be limited to a development allowance of 46.5 m<sup>2</sup> (500 ft.<sup>2</sup>) of gross floor area for each 0.4 ha. (1 ac.) of land zoned WC1.*

*Gross floor area is defined as:*

#### **Floor Area, Gross (Dwelling)**

*Shall mean, in the case of a dwelling, the aggregate of all areas of all storeys measured from the exterior faces of the exterior walls but excluding any detached accessory buildings, a breezeway, unenclosed sunroom or porch, and / or veranda, attic, bay and bow windows, cellar or basement when used solely for the purpose of storage.*

#### **Floor Area, Gross (Building):**

*Shall mean, in the case of a building, other than a dwelling, the aggregate of the area of all storeys devoted to retail sales, accommodation, customer service and / or Office use and other similar uses, measured to the face of exterior walls but shall not include mechanical rooms, common walls, stairwells, garbage and electrical rooms, parking structures and other similar uses ancillary to the main use.*

Currently, according to the Township records there is 9,582 sq. feet of gross floor area (GFA) on Pier 100. The property, after the severance approved in 2018 and including the shore road allowance, is 7.5 acres in area. Under current applicable zoning this would permit 3,750 sq. feet of GFA; the property currently contains approximately 5,832 sq. feet more GFA than would be allowed under current standards. This over development can continue because it was legally established under controls in place at the time it was developed. However, there is **no right of expansion** beyond what currently exists without an approved planning application. Any renovations that occur must be contained within the walls and height of the existing structures. The relocation of GFA is not permitted.

By-law 2014-14 replaced By-law 87-87 in 2015. By-law 87-87 did not limit the total GFA on WC1 zoned resorts to 500 sq. ft. per each 0.4ha of land zoned WC1. Under By-law 87-87 the amount of development was controlled through a coverage provision. Coverage controls footprint on the ground, not GFA. Undersized properties were allowed some limited expansion if it was within the coverage provision. Additional storeys could be added since coverage controls the building footprint, not total building area as is addressed through limits on GFA. Any development prior to 2015 would have occurred under By-law 87-87.

With respect shoreline structures, under Bylaw 2014-14, shoreline structures (docks and boathouses) are limited in width to 25% of the lot frontage. There was a similar provision in By-law 87-87. Based on 170 feet of frontage these provisions would permit 42.5 feet of shoreline structure parallel to the shoreline. A deck or sitting area along the shoreline that extends over the water would be counted as a shoreline structure.



## Conclusions

There is no additional development potential on the Pier 100 property currently. The existing development is well over what is permitted based on current policies and zoning controls. The existing development can continue because the Township has determined that it was legally established under previous regulations, so it has been deemed to be legal non-conforming. Legal non-conforming uses are protected under the provincial Planning Act. However, this protection is limited to what was legally constructed.

Expansions to legal non-conforming uses are managed by the municipalities. In the case of WC1 properties, the Township of Muskoka Lakes has decided no expansion of legal non-conforming uses will be permitted as of right. Future expansion must proceed by way of Zoning By-law Amendment. Any renovations must be within the building envelop of the existing structures. There are no expansion rights without a planning process that involves a public consultation process.

## Comments

This analysis has focused on the built development that is allowed on the Pier 100 site. I understand that your concerns are also related to increased usage that could negatively impact the enjoyment of your property. Unfortunately, planning controls do not address many of the issues arising from those concerns. For example, expanding to year round as opposed to seasonal operation is not controlled by planning. In fact, the Township encourages businesses to operate year round as a way of strengthening the local economy.

The Township's planning controls do not regulate the number of people that can be accommodated on a site. If the owners of Pier 100 re-configure the existing units to add more bedrooms this will be permitted if they can meet the requirements for on site servicing.

It is the right of other property owners to monitor development activities in the Township and there are provisions to allow input on planning applications. Notice of a development application within certain distances from other properties must be circulated or advertised. Property owners can request notice of any applications regardless of their proximity to the site. Burch's have taken appropriate steps to request notice of any applications related to the Pier 100 property from the Township and other property owners can do the same. However, notice would only be forthcoming for changes that trigger the need for a planning application. Applications for building permits for renovations would not do so.

The Township does have the authority to require owners of properties subject to site plan control to enter into properly executed site plans if current ones are not adequate. However, the Township of Muskoka Lakes typically does not do so. There are many site plans registered in the past and requiring updating would be onerous and costly for property owners and would not change the development rights associated with the property. Requesting an updated site plan could be pursued with the Planning Department, but it would probably be refused, so other than potentially upsetting the new owners, nothing would be achieved by it.

For issues such as noise or garbage, the Township does have by-laws controlling such nuisances and addressing property standards. You can contact the Township By-law Enforcement Officer who will assist with such issues. If there are concerns about the septic system, the Ontario Ministry of Environment Climate and Parks can be contacted.





It has been noted that one of the buildings on Pier 100 may encroach onto the Burch property. This is clearly not permitted. Even if the Burch's decide the encroachment can be permitted to remain, notice of it should be sent to the new owners so that they are aware of the encroachment and understand it can only continue with permission from the impacted property owner.

The best approach for managing impacts will be to establish the same respectful, relationship that was apparently in place with the former owners. To be successful, resort operators need to run clean, well maintained operations that encourage guests to return and are respectful of their neighbours. Hopefully the new owners of Pier 100 will understand this.

