



TO: Chair Bridgeman and Members of Planning Committee
AUTHOR: Bryce Sharpe, Manager of Planning
SUBJECT: ZBA-36/21, By-law 2021-116, (TOWNSHIP OF MUSKOKA LAKES)

RECOMMENDATION

THAT public and agency comments be received, reviewed and summarized and related recommendations be prepared and included in a further staff report to Planning Committee.

REPORT HIGHLIGHTS

Zoning By-law Amendment ZBA-36/21 (By-law 2021-116) has been initiated by the Township to amend Comprehensive Zoning By-law 2014-14. More specifically, to amend existing provisions pertaining to legal non-complying lots, buildings and structures, and to amend and add provisions to assist in regulating the use of accessory buildings in the Waterfront Designation. In summary, the effect of the proposed amendment will be to:

- prohibit enlargements to dwellings and sleeping cabins on undersized lots;
- add clarifying language regarding exterior extension of buildings and structures within required yard setbacks;
- prohibit second storey additions where lot coverage is exceeded on undersized lots;
- prohibit shoreline structure additions where width requirements are exceeded; and,
- improve the overall clarity of Section 3.2 of Zoning By-law 2014-14.

The effect of the proposed amendment will also be to limit in Waterfront Residential zones:

- the number of certain accessory buildings to two (2);
- the cumulative size of certain accessory buildings to 1000 sq. ft.;

- the height of certain accessory buildings to a single storey with exceptions; and,
- add certain related technical revisions.

BACKGROUND

Legal Non-Complying Provisions

In 2020, staff received a legal opinion from an applicant's solicitor advising that a long standing interpretation of Section 3.2 of Zoning By-law 2014-14, pertaining to legal non-complying lots, buildings and structures, was incorrect. Subsequent consultation with the Township's Solicitor confirmed that opinion.

Not only has the legal opinion caused a change in long-standing interpretation practice as it related to Section 3.2, it has also resulted in increased complexity, difficulty of interpretation and arduous implementation. Staff prepared an information [report](#) to Planning Committee in November 2020 addressing the issue at length and suggested a need in certain instances for more restrictive provisions. Committee subsequently directed staff to draft a proposed Zoning By-law Amendment for consideration and to give notice of a Public Meeting.

Accessory Building Provisions

The community is becoming increasingly concerned with the illegal use of accessory buildings for living accommodation as it increases the intensity of use along the Waterfront. This results in the potential for septic capacity issues and adverse impacts to water quality. Staff currently spend considerable time reviewing applications and designing approvals to ensure by-law compliance. An increasing amount of By-law Enforcement staff time is also being spent on this issue. Committee will recall that Planning Staff prepared an information [report](#) in June 2021 addressing these issues. Committee directed staff to draft a proposed Zoning By-law Amendment for consideration and to give notice of a Public Meeting.

Circulation

A Public Notice advising of the proposed amendment has been published in the Bracebridge Examiner, Gravenhurst Banner, and Huntsville Forester and circulated in accordance with the requirements of the *Planning Act*. In addition to these statutory requirements, notice was also posted on the Township website, circulated to all known lake association and ratepayer groups, as well as advertised on social media.

ANALYSIS

Planning Considerations

A. Provincial Policy Statement

The Provincial Policy Statement (2020) provides policy direction on matters of provincial interest related to land use planning and development. The proposed amendment is consistent with the Provincial Policy Statement.

B. District of Muskoka Official Plan

The District of Muskoka Official Plan provides goals, objectives, and policies to guide short and long-term development of lands within the District Municipality of Muskoka. District comments were forthcoming at the time of writing.

C. Township of Muskoka Lakes Official Plan

The Township of Muskoka Lakes Official Plan provides goals, objectives, and policies to guide short and long-term development of lands within the Township of Muskoka Lakes. The proposed amendment conforms to the Township's Official Plan.

D. Overview of Proposed Amendments to Comprehensive Zoning By-law 2014-14

Table 1 below provides an overview of the proposed exemptions/changes to Zoning By-law 2014-14, to address the above noted issues. Proposed Changes A through D address general provisions pertaining to legal non-complying lots, buildings and structures. These changes would apply to all zones Township-wide. Changes E through G relate to accessory buildings and will only apply to waterfront residentially zoned properties in the Township.

Table 1: Overview of Proposed Exemptions / Changes

Exemption / Change	Section	Description of Existing Section	Proposed Exemption	Proposal
A	Section 3.2 b) of By-law 2014-14	<ul style="list-style-type: none">• Exterior Extension of a Building or Structure on an Undersized Lot	<ul style="list-style-type: none">• Exterior Extension of Building or Structure on an Undersized Lot	<ul style="list-style-type: none">• Prohibit a legal non-complying dwelling or sleeping cabin on an undersized lot from being increased in floor area.

				<ul style="list-style-type: none"> Permit legal non-complying and non-habitable buildings and structures on undersized lots to be enlarged, extended, or structurally altered provided the building or structure and use will continue to comply with all other applicable zoning provisions.
B	Sections 3.2 c) and 3.2 g) of By-law 2014-14	<ul style="list-style-type: none"> Exterior Extension of a Building or Structure Within a Required Yard Increase in Height of a Building or Structure 	<ul style="list-style-type: none"> Exterior Extension of a Building or Structure Within a Required Yard 	<ul style="list-style-type: none"> Permit a legal non-complying building or structure that is located within a required yard, to be increased in floor area and/or height provided the increase complies with yards and all applicable zoning provisions. Remove/repeal Section 3.2 g).

C	Section 3.2 d) of By-law 2014-14	<ul style="list-style-type: none"> • Second Storey Additions to Structures on a Lot Where the Maximum Lot Coverage is Already Exceeded 	<ul style="list-style-type: none"> • Second Storey Additions to Buildings and Structures on a Lot Where the Maximum Lot Coverage is Already Exceeded 	<ul style="list-style-type: none"> • Prohibit second storey additions to a building or structure where the maximum permitted lot coverage is already exceeded.
D	Section 3.2 h) of By-law 2014-14	<ul style="list-style-type: none"> • Additions to Shoreline Structures Exceeding Maximum Cumulative Width 	<ul style="list-style-type: none"> • Additions to Shoreline Structures Exceeding Maximum Cumulative Width 	<ul style="list-style-type: none"> • Prohibit additions to docks and boathouses that exceed maximum permitted cumulative width requirements unless the resultant docks and/or boathouses comply with cumulative width and all other applicable zoning requirements.
E	Section 4.1.3 of By-law 2014-14	<ul style="list-style-type: none"> • Table 4.1.3 Summarizing Waterfront Residential Zone Provisions 	<ul style="list-style-type: none"> • Technical Amendment 	<ul style="list-style-type: none"> • Add a footnote (16) in Row 9 (Maximum Height – Accessory Building) to state “see 4.1.7”.
F	Section 4.1.4 of By-law 2014-14	<ul style="list-style-type: none"> • Front Yard Setback Exemptions 	<ul style="list-style-type: none"> • Technical Amendment 	<ul style="list-style-type: none"> • Add Subsection v., stating that a pumphouse, sauna or gazebo constructed in

				accordance with Section 4.1.4 shall not contribute to proposed accessory building limitations forming part of this amendment.
G	Section 4.1.6 of By-law 2014-14	<ul style="list-style-type: none"> • Sleeping Cabins 	<ul style="list-style-type: none"> • Technical Amendment 	<ul style="list-style-type: none"> • Add Subsection vii., stating that the height of a sleeping cabin constructed as part of a detached private garage is subject to an increased height (6.7 m/22 ft. from 6.1 m/20 ft.) as part of proposed accessory building limitations forming part of this amendment.
H	-	-	<ul style="list-style-type: none"> • Accessory Building Limitations 	<ul style="list-style-type: none"> • Limit the number of permitted accessory buildings to two single storey buildings not exceeding a combined ground floor area of 1000 sq. ft., excluding any permitted

				boathouse(s) sleeping cabin(s), attached garage(s), and privy(s), and any permitted pumphouse(s), sauna(s), and gazebo(s). <ul style="list-style-type: none"> • The single storey limitation does not apply to one of the two permitted accessory buildings where it consists of a detached private garage with a second storey sleeping cabin. • Where one of the two permitted accessory buildings is a detached private garage with a second storey sleeping cabin the maximum permitted height is 6.7 m (22 feet).
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Exemption A: Development on Undersized Lots

In place since the late eighties, Section 3.2.b), currently states that a lawful building or structure that is located on a lot which does not comply with the minimum frontage and/or area zone requirement, may be enlarged, extended, reconstructed or otherwise structurally altered if the building will continue to comply with all other requirements of the By-law. In the case of an existing lot of record, the zoning standard for most zones, is a minimum of 100 feet of lot frontage and 15,000 sq. ft. of lot area. It should be noted that

present day new lot requirements are considerably larger (up to 400 feet and 2 acres) and increasing the intensity of use on small frontages less than 100 feet as well as accommodating a potable water supply and sewage disposal facilities on lots under 15,000 sq. ft. in lot area are commonly raised land use concerns.

The proposed amendment will prohibit a dwelling or sleeping cabin on an undersized lot from being increased in floor area. Landowners who otherwise wish to pursue such development on undersized lots will need to proceed through the Minor Variance or Zoning By-law Amendment process, which would trigger a site-specific review and analysis of the property and proposed development.

Existing non-habitable buildings and structures will be permitted to be enlarged provided the resultant building or structure and use will continue to comply with all other applicable zoning provisions. In making this determination, staff have prioritized concerns relating to intensity of use and servicing while considering existing staff resources and a possible increase in applications stemming from the change.

Exemption B: Exterior Extension, Required Yards

Section 3.2.c) currently permits existing buildings and structures within required yard setbacks to be expanded, provided the expansion complies with yards and all other applicable zoning provisions. In contrast to staff's concerns with respect to undersized lots, staff have no concerns with the ability to construct additions to legal non-complying buildings and structures located within required yard setbacks, provided any expansion or enlargement complies with current day setback and other requirements. While bringing buildings fully into compliance with all requirements is always encouraged as noted in Township Official Plan policy, property owners have the right to retain existing lawful buildings and to reconstruct them in their current locations with equivalent or reduced dimensions.

The proposed amendment will specifically permit a compliant increase in floor area, which staff feel is an improvement over existing wording in terms of ease of interpretation and consistency.

Similarly, Section 3.2 g) currently allows existing legal non-complying buildings to be increased in height provided there is no increase in floor area and the increase in height complies with all other applicable zoning provisions. The proposed amendment will remove Section 3.2 g) and specifically permit a legal non-complying building or structure to be increased in height provided the resultant height does not exceed the maximum height requirement and complies with yard setbacks and all other applicable zoning provisions. In the opinion of staff, the removal of Section 3.2 g) and incorporation of wording addressing height in Section 3.2 c) is an improvement in terms of ease of interpretation and consistency. It also eliminates redundancy.

Landowners who otherwise wish to pursue non-compliant development will need to proceed through the Minor Variance or Zoning By-law Amendment process, which would trigger a site-specific review and analysis of the property and proposed development.

Exemption C: Second Storey Additions Where Lot Coverage is Exceeded

Section 3.2.d) currently permits a second storey addition to buildings which exceed the permissible lot coverage on a property, provided the cumulative floor area of all second storeys do not exceed the maximum permitted lot coverage. Given the strong direction of the municipality to control site alteration along the waterfront and hence the footprint of buildings by way of lot coverage, it is acknowledged that this provision encourages building upwards as opposed to outwards. With that noted, the addition of a second storey to a building located on a property that is already over developed can contribute to built form dominating the shoreline.

The proposed amendment will prohibit second storey additions in these circumstances. Landowners who otherwise wish to pursue second storey additions where lot coverage is already exceeded will need to proceed through the Minor Variance or Zoning By-law Amendment process, which would trigger a site-specific review and analysis of the property and proposed development.

Exemption D: Shoreline Structures Exceeding Maximum Permitted Cumulative Width

Subsection 3.2.h) currently permits legal non-complying docks and boathouses, which currently exceed the maximum permitted width, to expand, provided the shoreline cumulative width is not exceeded by all additions subsequent to 1988 (when the first Comprehensive Zoning By-law was passed), and all other by-law requirements are complied with. This provision has regularly been a concern during the review of planning applications due to issues of built form dominating the shoreline. In essence this subsection permits, as of right, docks and boathouses which exceed width requirements, to extend in length out into a lake or river, in most zones 66 feet and 50 feet, respectively, provided the extension complies with current day width requirements (i.e. cannot extend the full non-compliance). This provision is regularly identified by applicants as a right which is more visually impactful than a proposal to further exceed width. As such, it is often used as justification for approvals of increased width. Future expansions and their potential negative impacts are also regularly raised as a concern by the Committee of Adjustment when granting relief from shoreline structure width requirements.

Given the above considerations, the proposed amendment will prohibit additions to over width shoreline structures unless the resultant docks and/or boathouses comply with cumulative width and all other applicable zoning provisions. Landowners who otherwise wish to pursue non-compliant development will need to proceed through the Minor Variance or Zoning By-law Amendment process, which would trigger a site-specific review and analysis of the property and proposed development.

Exemptions E through F: Technical Amendments

Exemptions E through F address technical amendments necessary to bring clarity to the proposed amendment pertaining to accessory building limitations (see Exemption G below) and for ease of interpretation.

Exemption G: Accessory Building Limitations

Currently, Zoning By-law 2014-14 does not limit the number of accessory buildings permitted on a waterfront residentially zoned lot.

Aside from the following permitted accessory buildings, (boathouses, sleeping cabins, attached garages, privies, pumphouses, saunas and gazebos), the maximum number of permitted accessory buildings on a waterfront residentially zoned lot will be restricted to two. Note that this suggested revision applies only to buildings, and not structures (i.e. sundecks, stairs, docks, landings, inclinators, propane tanks, sport courts, etc.). In other words, no new limits will be placed on the ability to construct or place structures on a lot.

The maximum number of minor accessory buildings (pumphouses, saunas and gazebos) permitted within the front yard will remain at two. Should additional sauna, pumphouse or gazebo type buildings be proposed beyond the front yard setback, they will be included in the limitation of two permitted accessory buildings on a lot.

Aside from the following permitted accessory buildings, (boathouses, sleeping cabins, attached garages, privies, pumphouses, saunas and gazebos), the maximum permitted combined ground floor area of the two permitted accessory buildings shall be 1,000 sq. ft., unless other zoning provisions such as lot coverage are more restrictive.

Aside from the following permitted accessory buildings, (boathouses, sleeping cabins, and attached garages), both permitted accessory buildings will be limited to a single storey only. Notwithstanding the above, on a lot where both a detached garage and sleeping cabin are permitted, and where the sleeping cabin is proposed to be located above the detached garage, this accessory building will be permitted to consist of two storeys with a maximum permitted height of 22 ft. In this regard, to obtain sufficient headroom within both storeys for two storey buildings with a lower level garage and upper level sleeping cabin, relief from the current height requirement of 20 feet for this type of building is commonly requested and approved by the Committee of Adjustment. Through the proposed amendment, staff are hopeful that these requests can be avoided.

The following scenarios have been developed to assist Committee and the public in conceptualizing how this amendment will be implemented:

- A landowner owns a lot on Lake Muskoka with more than 91.4 m (300 ft.) of lot frontage and the lot is zoned waterfront residential. This individual is able to construct a dwelling with an attached garage, two land-based single storey accessory buildings (non habitable) not exceeding a combined ground floor area of 92.9 sq. m. (1000 sq. ft.), a two storey boathouse with a sleeping cabin not exceeding a floor area of 60.4 sq. m (650 sq. ft.) in the upper level, and minor

accessory buildings, such as, for example, a gazebo and a sauna, in compliance with applicable zoning provisions; or,

A dwelling with an attached garage, two land-based single storey accessory buildings not exceeding a combined ground floor area of 92.9 sq. m. (1000 sq. ft.), a separate land-based building containing a sleeping cabin not exceeding a floor area of 60.4 sq. m. (650 sq. ft.), a single storey boathouse, and minor accessory buildings, such as, for example, a gazebo and a pumphouse, in compliance with applicable zoning provisions; or,

A dwelling with an attached garage, two land-based accessory buildings with a combined ground floor area not exceeding 92.9 sq. m. (1000 sq. ft.), one of which is permitted to be two storeys with a sleeping cabin not exceeding a floor area of 60.4 sq. m (650 sq. ft.) in the upper level and 6.7 m (22 ft) in height, a single storey boathouse, and minor accessory buildings, such as, for example, a pumphouse and a gazebo, in compliance with applicable zoning provisions.

- A landowner owns a lot on Skeleton Lake zoned waterfront residential. This individual is able to construct a dwelling with an attached garage, two land-based single storey accessory buildings (non habitable) not exceeding a combined ground floor area of 92.9 sq. m. (1000 sq. ft.), a separate land-based sleeping cabin not exceeding a floor area of 60.4 sq. m. (650 sq. ft.), a single storey boathouse, and minor accessory buildings, such as, for example, a sauna and a gazebo, in compliance with applicable zoning provisions; or,

A dwelling with an attached garage, two land-based accessory buildings with a combined ground floor area not exceeding 92.9 sq. mm (1000 sq. ft.), one of which is permitted to be two storeys with a sleeping cabin not exceeding a floor area of 60.4 sq. m. (650 sq. ft.) in the upper level and 6.7 m (22 ft.) in height, a single storey boathouse, and minor accessory buildings, such as, for example, a gazebo and a pumphouse, in compliance with applicable zoning provisions.

Landowners who otherwise wish to pursue non-compliant development will need to proceed through the Minor Variance or Zoning By-law Amendment process, which would trigger a site-specific review and analysis of the property and proposed development.

Next Steps

It is recommend that public and agency comments regarding the proposed amendment be received. After which, upon direction from Committee, staff will return with a future report outlining the main themes heard, with related planning analysis and a recommendation for next steps.

FINANCIAL IMPLICATIONS

Staff would note that, if approved, the proposed by-law changes will likely result in an increase in complexity of the Zoning By-law and necessitate a substantial increase in the

number of planning approvals related to waterfront development. In anticipation of the increase in the number planning applications, in particular Minor Variance and Zoning By-law Amendments, there will likely be implications for corresponding resources and time to review site specific circumstances and applications.

Staff will continue to monitor this situation, reprioritize and streamline other processes where appropriate and necessary. However, should additional budget resources be warranted to address the expanded workload that results from these changes, the Department's Operating Budget submission will be updated accordingly.

STRATEGIC PLAN

Goal: Preserve and Protect the Natural and Cultural Environment

Action: Continue to preserve and protect the natural features of the Muskoka watershed found within the Township, including water quality.

COMMUNICATIONS

This staff report was distributed to Council and all those registered to receive notification through the meeting agenda electronic notification system, and was published on the Township's website in accordance with the Township's Procedural By-law. Notice of the public meeting was further advertised as described in the background section above.

ATTACHMENTS

None

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