

*Case Name:*

**Savelli v. Muskoka Lakes (Township)**

**IN THE MATTER OF subsection 45(12) of  
the Planning Act, R.S.O. 1990, c.**

**P.13, as amended**

**Appellant: Dina Savelli**

**Applicant: Susan Elliot**

**Subject: Minor Variance**

**Variance from by-law No.: 87-87**

**Property Address/Description: 1723 Muskoka Road 118**

**Municipality: Township of Muskoka Lakes**

[2012] O.M.B.D. No. 81

Municipal File No.: A27/11, OMB Case No.:

PL110715, OMB File No.: PL110715

Ontario Municipal Board

**Panel: Joe. G. Wong, Member**

Decision: February 6, 2012.

(17 paras.)

**Appearances:**

Dina Savelli: Anne-Marie Griffioen, agent.

Susan Elliot: self-represented, agent.

Township of Muskoka Lakes: H. Elston, counsel.

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**DECISION DELIVERED BY JOE G. WONG**  
**AND ORDER OF THE BOARD**

## **Background**

1 Dina Savelli (Appellant) is appealing a decision of the Township of Muskoka Lakes, Committee of Adjustment File No. A27/11 approving a minor variance to permit the construction of a two-storey garage which will result in a lot coverage of 10.9% on the lot area within 200 feet from the high water mark on lands known municipally as 1723 Muskoka Road 118, Unit #5 (Subject Lands). The Subject Lands are owned by Susan Elliot (Applicant). The Appellant lives next door on the east side of the Subject Property.

2 The Applicant is currently constructing a two-storey garage and seeks the following variance:

Relief is requested from Section 3.1.2.a. of By-law 87-87, as amended, being the maximum coverage of buildings on a lot. The subject property is zoned Waterfront Residential (WR5) and is located on a Category 1 lake.

The maximum permitted coverage of buildings on the lot within 200 feet from the high water mark is 10%. In this case, the lot area within 200 feet from the high water mark is 40,970 square feet. The maximum coverage permitted is 4,097 square feet.

The proposed coverage of existing and proposed buildings within 200 feet from the high water mark is 4,438 square feet or 10.9%. The variance requested is 359 square feet.

3 At the hearing, the Appellant was represented by a friend/neighbour, the Applicant was assisted by a planner and the Township was represented by counsel.

## **Evidence**

4 James Dymont, a qualified land-use planner, testified on behalf of the Applicant. Mr. Dymont testified that the back portion of the property has a 25-30% slope and is not developable. The minor variance will permit a two-car garage and this garage meets all of the other zoning by-law requirements except for lot coverage. He indicated that the municipality's calculation of lot coverage includes all structures that are covered. In this case, the outside deck has a "duradeck covering" instead of a regular wood decking which makes it covered instead of open. According to Mr. Dymont, it is this deck covering that puts the lot coverage over the 10% limit.

5 Mr. Dymont acknowledges that the current setback for the cottage represents a legal non-complying use as the cottage dates back to the 1950's prior to the comprehensive by-law. Mr. Dymont testified that there is no record at the municipality of any building violations. He testified that there are no outstanding orders to comply on the Subject Property. Mr. Dymont testified that

the Applicant could as of right build a garage in the proposed location but one just not as large.

**6** Mr. Dymont testified that in terms of maintaining the general intent of the Official Plan (OP), new buildings are required to be set back 66 feet from the shoreline and the garage is set back 100 feet from the shoreline. The OP specifies strict compliance for lot coverage however, Section 9.6 permits a variation not exceeding 1/10 of the permitted lot coverage without an OP amendment. It is Mr. Dymont's evidence that the variance here is less than 1/10 (359 instead of a possible 409 s.f.) and that the OP anticipates some variance.

**7** According to Mr. Dymont, the intent of the zoning by-law (ZBL) is to protect the visual quality of the shoreline by limiting lot coverage in the first 200 feet of the lot because beyond 200 feet all you see is forest. In this instance, the garage is not visible from the shoreline because of the existing trees. Therefore, it meets the intent of the ZBL.

**8** In terms of appropriate and desirable, Mr. Dymont testified that a garage is a typical accessory building for residential use. The proposed garage at 720 square feet is the same size as the Appellant's garage and fits with the character of area. Mr. Dymont contends that the additional size, the extra 359 square feet, is located on the west side, the side furthest from the Appellant, making it less visible. He informed the Board that there are letters of support from all the neighbours except the Appellant.

**9** In Mr. Dymont's opinion, the variance is minor because the OP regards anything less than 1/10 over the permitted lot coverage as minor. The variance here would allow for the building width (permit a 2-car instead of 1-car garage) and the visual appearance of the shoreline unaffected.

**10** Mr. Dymont also recommended some conditions of approval that he believes would improve the development in terms of privacy between the Subject Property and the Appellant's property, and a means of lessening the potential water run-off. These conditions will be more fully described later in this decision.

**11** The Appellant, Ms Savelli, was unable to attend the hearing but she was represented by Ms Anne-Marie Griffioen who is a friend and neighbour. Ms Griffioen presented and read aloud various statements on the Appellant's behalf. Ms Griffioen testified as to the Applicant's position that the subject lot is already developed to its maximum, that there are other violations of the by-law, and that the proposed variance is not minor and not appropriate. She brought forward concerns about the size of the existing house and boathouse; however, the Board is able to confirm that these concerns are not at issue here, as there is only a single variance for lot coverage in this application. According to Ms Griffioen, the Appellant would like the rules (the law) adhered to.

### **Disposition**

**12** At this hearing, the Appellant's witness provided little planning evidence and the only professional evidence was provided by the Applicant's planner. The overarching goal of the

Township's OP is the protection and preservation of natural environment and waterfront. The Board finds that the proposed garage will be located approximately 100 feet back from, does not impact, and is not visible from the shoreline. The Board finds a garage desirable to keep vehicles and equipment under cover and not out in the open. The Board finds that the OP permits a minor variance of up to 1/10 of the lot area.

**13** The Board finds the proposed garage is similar in size and configuration to other garages in the neighbourhood, including the Appellant's. The Board finds little or no impact to neighbouring properties because of the existing tree coverage, and the houses being orientated toward the water, and the garage being located towards the back of the property.

**14** The Planner has recommended trees be planted on the east side of the proposed garage (side closest to the Appellant) to further minimize any visual impact. No other variances are required here and the garage conforms in every other way, except for the additional lot coverage (which is the subject of the application).

**15** For all of the above reasons, and together with the uncontradicted professional land-use planning evidence and opinions of Mr. Dymont, the Board is satisfied in this instance that the proposed variances meets the tests in subsection 45(1) of the *Planning Act*, are in the public interest and represent good planning. The Board also agrees with and adopts Mr. Dymont's recommended conditions of approval as part of its decision.

**16** THE BOARD ORDERS that the appeal is allowed in part and the variance to the Township of Muskoka Lakes Zoning By-law No. 87-87, as amended, is authorized subject to the following conditions:

1. That eight (8) white pine and/or balsam fir trees having a minimum height of 1.0 metres be planted in the side yard of the proposed garage as shown on Exhibit 7 ("Attachment A").
2. That 1.0 cubic metre of riprap stone be placed at the outlet of the storm water culvert as shown on Exhibit 7 ("Attachment A").

**17** This is the Order of the Board.

JOE. G. WONG  
MEMBER

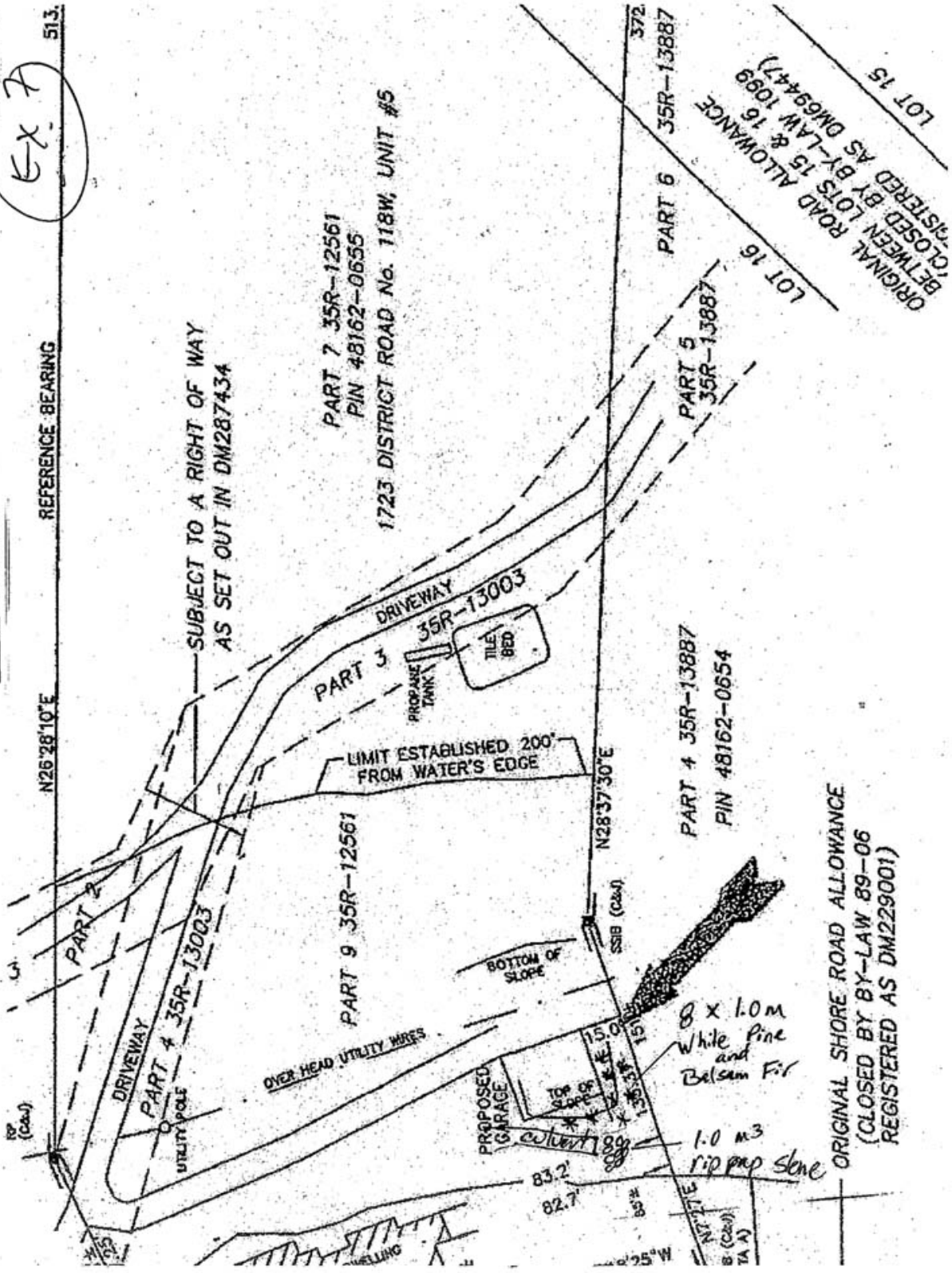
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PL110715

"ATTACHMENT A"

REFERENCE BEARING  
N26°28'10"E  
513.

EX-7



ORIGINAL SHORE ROAD ALLOWANCE  
(CLOSED BY BY-LAW 89-06  
REGISTERED AS DM229001)

ORIGINAL ROAD ALLOWANCE  
BETWEEN LOTS 15 & 16  
(REGISTERED AS DM69447)

8 x 1.0 m  
White Pine  
and  
Balsam Fir  
1.0 m<sup>3</sup>  
ripping stone

PROPOSED GARAGE  
15.0  
15.0  
1.35 x 1.35

BOTTOM OF SLOPE

TOP OF SLOPE

OVER HEAD UTILITY WIRES

LIMIT ESTABLISHED 200'  
FROM WATER'S EDGE

DRIVEWAY  
35R-13003

PROPEANE TANK  
TILE BED

SUBJECT TO A RIGHT OF WAY  
AS SET OUT IN DM287434

REFERENCE BEARING

N26°28'10"E

513.

"ATTACHMENT A"

PL110715

EX-7

qp/e/qlspi