

*Case Name:*

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

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

**P.13, as amended**

**Applicant and Appellant: Glen & Virginia Robinson**

**Subject: Minor Variance**

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

**Property Address/Description: 1035 Brandy Crest Road Unit 23**

**Municipality: Township of Muskoka Lakes**

[2012] O.M.B.D. No. 678

Municipal File No.: A-53/09, OMB Case

No.: PL090817, OMB File No.: PL090817

Ontario Municipal Board

**Panel: J.P. Atcheson, Member**

Decision: October 24, 2012.

(28 paras.)

**Appearances:**

Glen and Virginia Robinson.

Township of Muskoka Lakes: H. Elston, agent.

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**DECISION DELIVERED BY J. P. ATCHESON**  
**AND ORDER OF THE BOARD**

**1** This was a hearing in the matter of an appeal by Glen and Virginia Robinson (the Appellant) from a decision of the Township of Muskoka Lakes Committee of Adjustment (File A-53/09) that

refused to authorize minor variances for a property known municipally as 1035 Brandy Crest Road Unit 23.

2 The variances sought are from Zoning By-law No. 87-87 of the Township of Muskoka Lakes and are intended to permit a proposed garage /storage building on the subject property.

3 The variances applied for are as follows:

RELIEF FROM SECTION 7.3.1 OF Zoning By-law No. 87-87

\* A lot area of 0.4 ac., whereas the Zoning By-law requires 1.0ac.

\* A lot frontage of 110ft., whereas the Zoning By-law requires a lot frontage of 200 ft.

\* A maximum building height of 20.5 ft., whereas the Zoning By-law permits a maximum height of 20 ft.

4 The Board at the commencement of the hearing and with the consent of the parties granted participant status to Mr. Joe Baker. Mr. Baker owns property adjacent to the subject land at 1035 Brandy Crest Road Unit 25.

5 The Board was also advised the parties had reached a settlement with respect to the appeal as set out in Minutes of Settlement, Exhibit 2. The substance of the settlement is that the municipality now has no issues with the variances and supports the requested variances subject to four conditions being imposed as set out at Appendix "A" and the appellant entering into a development agreement in the form found at Appendix "B" to the Minutes of Settlement.

6 The substance of the conditions agreed to by the parties are:

\* A declaration by the Robinsons that the garage /storage building will be built substantially in accordance with the plans submitted and found at Exhibit 3, Tab7.

\* That the Robinsons enter into an agreement with the municipality in accordance with s. 45 (9.1) of the *Planning Act* to address the following matters;

\* The garage /storage building will not be used for commercial purposes;

\* The mature, healthy trees on the subject property which are located beyond the development envelopes will be preserved; and,

\* Dark Sky Lighting will be utilized for the garage/ storage building.

## **BACKGROUND AND EVIDENCE**

**7** The Board heard from Mr. Gregory Corbett a qualified Land Use Planner, formally retained by the Appellant in August 2012 to assist them in the matters now before the Board.

**8** He testified that the subject property is an existing lot of record located on the south side of Brandy Lake that falls within the "Waterfront" designation of the Township's Official Plan and is zoned Waterfront Residential (WR-4) Zone by By-law 87-87.

**9** Mr. Corbett on questioning from the Board confirmed that this area of the municipality was designated as a Rural Area by the 2005 Provincial Policies Statement ("PPS") and that the development being proposed was consistent with directions found in that document. He also confirmed that the District of Muskoka Official Plan designated the subject property "Waterfront" and that in his opinion there were no conformity issues with the District OP.

**10** He testified for the Board that at the time of the passing of Zoning By-law 87-87, Brandy Lake was deemed to be a "at capacity lake "by the District of Muskoka Water Quality model and as such was zoned WR-4 Zone. The zone was intended to restrict further development around the lake.

**11** He testified that further studies of the lake determined that it was no longer "over threshold" and the municipality through Official Plan Amendment No. 40 changed its status, and further, the municipality proposed a revised zoning from WR-4 to WR-1 in a new comprehensive Zoning By-law passed by the municipality but which has not been given final approval by the Board. It was his testimony that if the WR-1 zoning were in place the variances for lot area and lot frontage would not be required and the only relief would for the 0.5.ft height variance.

**12** Mr. Corbett opined that in light of Official Plan Amendment No. 40, the variances being proposed both individually and collectively would meet the intent of the Township's Official Plan as the prohibition to further development on Brandy Lake has been removed by OPA 40. He carried forward a similar planning rationale with respect to the Zoning By-law noting that the delay in bring this specific matter forward was the hope that the new Comprehensive Zoning By-law would be in place removing the existing higher requirements for the lot area and lot frontage thus making this relief unnecessary. It was his testimony that the variances being requested would meet the intent and purpose of the zoning bylaw due to the change in Brandy Lake's status. He reviewed for the

Board, through a series of photographs of the site (Exhibit 2, Tab 6), the proposed location of the garage/storage building in relation to other structure on the site and adjacent properties and opined that there would be no adverse impacts on any surrounding property from the garage /storage building being located on the site in the manner proposed. He sees the variance as being minor in nature in light of the reclassification of Brandy Lake, resulting in appropriate development for the area

**13** Mr. Corbett opined in this case that the settlement reached and the conditions being proposed where appropriate and reasonable and represented good planning consistent with the applicable Official Plan polices as set out in his evidence outline Exhibit 5 and should be approved.

**14** Mr. Baker in his testimony to the Board expressed concerns that the proposed structure was too large and was intended to be used for commercial purposes. He takes little comfort from the condition being recommended in the Minutes of Settlement or in the fact the current zoning would not permit commercial operations at this location. He believes that the building shown on the plans at Exhibit 2 Tab 7 will be higher than the relief being sought and represents an over development of the site.

**15** He opined that in his view the lot coverage set out by Mr. Corbett at Exhibit 5 for the various structures on the property were incorrect; however, on questioning from the Board, he could not substantiate this allegation and in fact stated that this was not an issue that should derail the project.

**16** He believes that the proposed garage /storage building is an over development of the site especially when this structure is larger than the current principal residence on the site.

## **FINDINGS AND CONCLUSIONS**

**17** The Board, after carefully reviewing the evidence and submissions made by the parties and the participant, makes the following findings.

**18** The Board accepts the uncontradicted evidence of Mr. Corbett that there are no matters of Provincial interest affected by this application and that the applications are in conformity with the intent and purpose of the District of Muskoka Official Plan and the Township of Muskoka lakes Official Plan as amended by Official Plan Amendment No. 40.

**19** The Board has reviewed the proposed condition set out at Appendix "A" and the proposed development agreement as set out at Appendix "B" to the Minutes of Settlement Exhibit 2 and find them to be appropriate and reasonable in this case and represent appropriate planning controls in conformity with the policy directions of the Official Plan. The Board would note that the development resulting from this approval will be a garage /storage building 0.5 ft. higher than that currently sanctioned by the Zoning By-law and that the relief for lot area and lot frontage recognize the existing lot of record found on the property and as such constitute no change to the existing conditions. Furthermore, the planning rationale to restrict further development on Brandy Lake no

longer exists.

**20** The Board is satisfied after reviewing the photographic evidence and the uncontradicted planning evidence of Mr. Corbett that the four tests prescribed by s. 45(1) of the Act both individually and collectively have been met in this case and the variances should be approved.

**21** The Board has considered the submissions of Mr. Baker and finds that there is no evidence to support his allegation that the coverage figures being put forward are not correct. Mr. Corbett in his testimony confirmed that there are no Zoning By-law regulations that requires the principal residence in the WR-4 Zone to be the largest structure on the property. The sole criterion with respect to lot coverage according to Mr. Corbett is that there must be a principal residence on the property, or in other words a WR-4 zoned property cannot be used exclusively for accessory building or structures. Nor according to Mr. Corbett is there any regulation that prescribes a ratio between the lot coverage of accessory buildings and the principal use building on the site.

**22** If Mr. Baker, in the future, can establish that the property is being used for purposes prohibited by the bylaw, or which are not consistent with the conditions agreed to by the parties in their Minutes of Settlement which are to be registered on title then he has other avenues with the municipality to have such infractions addressed and enforced.

**23** However, the Board at this time can find no evidence that would lead it to conclude that Mr. Baker's concerns have any merit which the Board could deal with beyond the conditions being proposed.

**24** It is also the determination of the Board that the relief being sought for the height of the building is minor and will have no adverse impact on any abutting properties, nor is there any evidence the building plans set out at Exhibit 2 Tab 7 subject to the relief be requested will not comply with the zoning standards of the municipality or the *Ontario Building Code*. These are mandatory requirements under the jurisdiction of the Chief Building Official of the Municipality.

**25** There is no evidence before the Board that the variances being requested for proposed development will have any adverse impacts to Brandy Lake or any of the surrounding neighbours. Nor does the Board have any evidence that the proposed garage/storage structure represents inappropriate development. The more compelling evidence is that the proposed development is permitted by the Zoning By-law is within the coverage limits and will be located within the building envelope prescribed by the Zoning By-law.

**26** The Board accepts the uncontradicted planning evidence of Mr. Corbett that the variances being requested meet the four tests of the Act and should be approved subject to the conditions agreed to by the parties.

**ORDER**

**27** The Board orders that the appeal is allowed and the variances to By-law No.87-87 of the Township of Muskoka Lakes for property known municipally as 1035 Brandy Crest Road Unit 23 are authorized as follows:

**REFLIEF FROM SECTION 7.3.1 OF Zoning By-law No. 87-87**

\* A lot area of 0.4 ac., whereas the Bylaw requires 1.0 ac.

\* A lot frontage of 110 ft., whereas the Bylaw requires a lot frontage of 200 ft.

\* A maximum building height of 20.5 ft., whereas the Bylaw permits a maximum height of 20 ft.

**28** The variances are to be subject to the conditions set out at Attachment "1" to this decision.

J.P. ATCHESON  
MEMBER

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**ATTACHMENT 1**

**APPENDIX "A"**

**CONDITIONS OF MINOR VARIANCE A-53/09**

1. That the garage/storage building is constructed substantially in accordance with the drawings submitted with the application;
2. That the Owner enters into an Agreement with the Township of Muskoka Lakes, in accordance with Section 45(9.1) of the *Planning Act*, and the Agreement be registered on title in accordance with Section 45(9.2) of the *Planning Act*. Said Agreement to address the following:
  - a) The garage/storage building will not be used for commercial purposes;

- b) The mature, healthy trees on the subject property which are located beyond the development envelopes will be preserved; and,
- c) Dark Sky Lighting will be utilized for the garage/ storage building.

qp/e/qlspi