

ISSUE DATE:

**July 25, 2011**



PL101136

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Andrew Fraser  
Subject: Minor Variance  
Variance from By-law No.: 2005-06  
Property Address/Description: Conc 2, Part Lot 29 07B, Ward S. Elmsley  
Municipality: Township of Rideau Lakes  
Municipal File No.: A-31-2010  
OMB Case No.: PL101136  
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**APPEARANCES:**

**Parties**

Andrew Fraser

Township of Rideau Lakes

**Counsel**

J. L. Cohen

A. E. Fleming, D. Munday

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

**Background**

Andrew Fraser (Applicant) is appealing a decision from the Committee of Adjustment for the Township of Rideau Lakes (Township) which refused a variance to reduce a setback from water. The variance is needed to accommodate a 1,956 s.f. permanent residence and replace an existing 1,098 s.f. seasonal residence. The property is located at Concession 2, part Lot 29, 29 07B, Ward of South Elmsley (Subject Lands).

The Applicant seeks one minor variance to Zoning By-law No. 2005-6 as amended:

1. To allow for a minimum setback of 15 metres from the water, whereas the by-law requires a minimum setback of 30 metres from the water.

At the hearing, both the Applicant and Township were represented by counsel and assisted by a land-use planner.

## **Evidence**

Michael Wright, a qualified land-use planner, appeared on behalf of the Applicant. Mr. Wright testified that the Applicant proposes to replace an existing dwelling with something more permanent to be used year-round. The Applicant has occupied the existing cottage with its 15 metre setback to the shoreline without impact. According to Mr. Wright, moving the new/replacement cottage back to meet the required setback of 30 metres results in the lost of natural vegetation and puts it closer to his neighbour, both negative impacts.

Mr. Wright submits that the Subject Lands are designated rural and one dwelling per lot is permitted. The existing dwelling is located 13.5 metres from the shoreline and creates no degradation to the natural shoreline. The proposed new dwelling will be setback 15 metres and is in fact an improvement over the existing situation. In addition, the new septic system will be located outside the 30 metre setback.

In Mr. Wright's opinion, the Official Plan (OP) permits compatible uses and here it means preserving the shoreline and existing vegetation. The OP contemplates physical impediments where the 30 metre setback cannot be met. Here, moving the proposed new/replacement cottage further back results in the loss of vegetation and impacts to the sight lines and privacy of the neighbour and therefore, not moving it maintains the intent of the OP. Mr. Wright submits a cottage/dwelling is a permitted use in the zoning by-law and the location of the septic system has been optimized. The proposed dwelling setback has no impact.

Hans von Rosen, a "fish and wildlife technologist", provided expert opinion evidence. According to Mr. von Rosen, there are no threatened habitats or species on the subject lands and the water's edge is bare rock and not erosion prone and most of the shrubbery on the shoreline slope has not been interfered with.

Mary Alice Snetsinger was qualified as a biologist for the purposes of this hearing. Ms Snetsinger testified that there was no additional impact from the new

footprint of the new/replacement cottage because the new septic system was being moved further back to be 30 metres from the shoreline and this is better for the lake. Moving the cottage further south (back) to achieve the required setback would involve clearing trees, the lost of forest and would have the potential for a lost of habitat. Moving the septic system back is preferable to relocating the cottage. In this case, the original footprint is being moved slightly further back (from 13.5 to 15.0 metres from the shoreline) and this is done without removing any vegetation. According to Ms Snetsinger, moving the cottage back results in greater environmental impact such as the lost of forest. Under cross-examination, Ms Snetsinger acknowledged that other locations on this site were not considered.

Andrew Fraser is the Applicant/owner. Mr. Fraser testified that the cottage is being modernized as a year round cottage (from 4 months of use to 11 months a year) and there is no environmental impact. According to Mr. Fraser, relocating the cottage to the south (back) impacts the open lawn and there would be a need to cut down trees to meet the setback. This also results in a lost of privacy for the neighbours, parking space, access to drilled wells and view. Whereas, utilizing the existing site and building footprint minimizes any impact

Jocelyn Chandler is a qualified land-use planner and a planner with the Rideau Valley Conservation Authority (RVCA). Ms Chandler testified that the new/replacement cottage at 1,956 s.f. (4 bed, 2 bath with a basement) is substantially larger than the existing one at 1,098.6 s.f. (3 bed, 1 bath). The new cottage would require a new septic system to meet current code requirements. Ms Chandler acknowledges that the minimum setback distance in the Official Plan (OP) is 30 metres from the high water mark but would accept a 25 metre setback to reduce the disruption to the mature trees and to recognize the owner's past stewardship of the land. However, she submits that the subject lot is large and that the cottage should be brought closer to conformity with the OP because it is now only at about half the required distance. In her opinion, moving it back from its current location on redevelopment would, from a conservation perspective, represent a net environmental gain.

Michael Yee is the Manager, Biology and Water Quality, for the RVCA. Mr. Yee testified that this redevelopment is an opportunity to move the cottage back to the minimum setback of 30 metres. The 30 metre setback is based on scientific data that, together with a 30 metre vegetative buffer, will maintain the shoreline as a fish habitat.

According to Mr. Yee, the lake is a living organism and the further you push back from the shoreline together with a vegetation buffer, the better the results for the lake in the long term. Mr. Yee agreed that a 25 metre setback is acceptable in this circumstance as a balance between competing interests. However, he considers a 30 metre setback is better.

Sheldon Laidman, a qualified land-use planner and the Township's manager of Development Services, testified that the Township has 25 major lakes, with 4,000 properties under its jurisdiction and 50% of these are waterfront properties.

According to Mr. Laidman, the requirement is for a 30 metre setback from the water on all sides. The subject lands are located on Otter Lake which is one of the most densely populated with approximately 200 properties. The subject lot is almost 2 acres with 600 feet frontage and it is one of the few lots that fully comply with the minimum size requirement of 1 acre and 200 feet frontage. The underlying policies of the OP are to protect the natural and built resources, to improve the quality of the water and to seek improvements to waterfront properties when the opportunities arise.

Mr. Laidman testified that one of the objectives of the OP is to improve the quality of the environment where possible and redevelopment provides such an opportunity. Other OP policies include protecting the shoreline and aesthetics to prevent development. The required 15 metre vegetative buffer forms part of the 30 metre setback from the shoreline. According to Mr. Laidman, the intent of the OP is to maintain consistency. In this case, there are no reasonable physical constraints to prevent compliance with the setback as this is a flat property with no significant woodlands to maintain. The subject site is a 2-acre site with at least 1 acre of developable land. Mr. Laidman submits there is no justification for a lot with no unique characteristics that require a reduced setback.

According to Mr. Laidman, moving the dwelling to a conforming location requires the removal of some trees. Removal of some trees here is not significant because there is no significant woodlot here. However, any trees lost can be replaced with new trees and additional plantings. Mr. Laidman testified that the only issue here is the setback as its use as a year-round residence is legal.

In Mr. Laidman's opinion, the intent of the ZBL is to implement the waterfront and environmental policies and to ensure a consistent approach to the waterfront setback.

The requested variance is not minor but represents a 50% reduction which has significant policy and precedent setting implications. The impacts of the variance are significant, the intensity of use with a year-round structure, the increase in size, increased massing from 1 story to 2 storeys all have increased environmental impacts. He contends that this variance would set a negative precedent for the other 4,000 lakeside cottages. Accordingly, this variance is not appropriate or desirable from a public interest perspective.

### **Disposition**

It is not disputed that the Applicant and his family have been responsible stewards of the land, but this is an application for a minor variance to replace an existing 1,098 s.f. seasonal residence with a new 1,956 s.f. year-round residence. The new/replacement dwelling represents a significant increase in size (almost double) and intensity of use (from seasonal to year-round) and together they create increased environmental impacts. The Board finds it is these types of impacts that are mitigated by the use of the required setback.

The OP directs development and redevelopment to meet the required setback and to protect and improve the natural environment and water quality of the lakes. In the Board's opinion, a reduced setback from the water is not appropriate from a public interest perspective, nor suitable from a planning perspective. The 30 metre setback is the primary zoning standard for 50% of the properties in the township and approximately 500 properties now comply. It is not in the public interest to reduce the standard in half where it could be accommodated and so compliance should be required. The Board finds that this site has no significant physical constraints including no special woodlots or species to be protected. The Applicant can look at replanting if trees need to be removed in order to have both the septic system and dwelling to comply with the setback.

The Board acknowledges that the RVCA witnesses indicated that 25 metres is acceptable in this instance but that a 30 metre setback is still appropriate in this instance. The Board agrees with Mr. Laidman that there are no planning reasons to deviate from the required setback. The Board finds that it would create a negative precedent making it difficult in the future to enforce the 30 metre setback when you

have a lot here that could readily meet the required setback but was not required to do so. In the Board's opinion, it is only in very narrow circumstances that you would consider intrusion into the 30 metre setback such as with an undersized lot - here the subject lands can accommodate the required setback.

In terms of being minor, the proposed 15 metres setback represents a slight improvement over the existing condition but the proposed reduction is not minor when considering the additional impacts from a new, larger, year-round residence as compared to the existing seasonal cottage.

Variances cannot be authorized unless they meet all four tests of subsection 45(1) of the *Planning Act*. They must maintain the general purpose and intent of the operative Official Plan; they must maintain the general purpose and intent of the applicable zoning by-law; be desirable for the appropriate development of the land; and they must be minor. The Board finds that the proposed variance fails at least three of the four tests in subsection 45(1) of the *Planning Act* and therefore it is not approved.

THE BOARD ORDERS that the appeal is dismissed and the variance is not authorized.

This is the Order of the Board.

"J. G. Wong"

J. G. WONG  
MEMBER