

## **Supplemental Information for 12.0 of Section 45 Application – Donkers Moffat for 30 B12 Lombardy**

### **Why are we re-applying just after finishing building new house?**

After reviewing PACA discussion related to Section 45(2) application A-26-2025 (2025-09-10) and doing legal research, we are now more educated on our legal land owner rights regarding reasonable evolution/expansion of nonconforming use of property. Based on the Local Planning Appeal Tribunal (Tribunal) PL200039 of Fraser vs Rideau Lakes Nov. 17, 2020 ruling against RLT (detail below), we now believe that our previous application A-34-2022 was incorrectly reviewed in January 2023 under Section 45(1) instead of under Section 45(2), and for our resubmission under Section 45(2) in May 2024 that we were incorrectly advised that we had to adhere to the ZBL of 10% Lot Coverage and 15% Floor Index. We now understand that these application reviews should have taken into consideration the common law protections of landowner's rights to the reasonable evolution/expansion of nonconforming use under Section 45(2) and did not need to be held to the ZBL restrictions.

Construction of our house and demolition of the original shed was completed in May 2025, so there are no options to revise/increase the house design or location to what we would have submitted under the previous Section 45(2) application without the ZBL restrictions. Therefore, our only option is to request replacement of the demolished original shed with a new shed at our additional expense of \$15,000 plus.

### **Summary points:**

1. When we started this process in fall 2022, the RLT Manager of Development Services advised us that since we were demolishing the cottage that we had to apply under Section 45(1) and adhere to all ZBL restrictions (i.e., 30m water setback, 10% lot coverage, etc.). Our application was reviewed by RLT PACA on Jan. 23/23 and was not approved because we exceeded the 10% lot coverage criteria with our request to keep the existing shed that was built in 1970's. Since the Chairperson of PACA at the time advised us that: "Rules are the Rules", we felt that we had to comply with the advice of the Manager of Development Service in order to get approval to build our house and thus asked to defer our application to make design revisions.

#### **RLT Planning ought to have known this advice was incorrect:**

In the Tribunal PL200039 of Fraser vs Rideau Lakes Nov. 17, 2020, the Tribunal ruled against RLT that "landowner is entitled to demolish and reconstruct a legally nonconforming structure" and should be reviewed under Section 45(2):

*From paragraph [34] of Findings: "Mr. Norwood's insistence for some time that the Application should be evaluated under s. 45(1) is incorrect. Furthermore, he provided the Committee of Adjustment with incorrect advice based on this incorrect interpretation of the Act"*

We assume that the RLT Manager of Development Services at the time would have been aware of this Tribunal ruling.

2. Talking with other people on the lake we learned that to get an old cottage rebuilt as a house on existing footprint in RLT, that you had to submit as "Substantial Renovation" under Section 45(2).
3. In Jan. 2024, we resubmitted an application under Section 45(2), but were given a new lower 60m lot area and were advised by the Manager of Development Services that even though our application was now under Section 45(2) that we had to comply with ZBL of 10% lot coverage and 15% Floor Space Index. The RLT 60m area was obviously incorrect at 84% of total lot area (our lot is rectangular and 63m deep (60m is 95% of 63m total depth). Even though this number seemed wrong, we were advised that RLT would only accept a different number from an Ontario Land Surveyor (OLS). So, we had to spend \$7,000+ to get a field survey, survey registered at Ontario Land Registry Office (LRO), and legal fees to get property title revised and registered at LRO.

When we submitted the OLS letter with accurate lot areas, we were again advised that we still had to comply with 10% Lot Coverage. The only way to comply with the 10% lot coverage would be to demolish the existing shed.

4. During PACA review May 22, 2024 we were also advised that we had to add a vegetation buffer along south property line, even though our southern neighbour submitted a letter opposing any such property line buffer.

**If we knew then what we know now:** - only needed Permission (not Approval) under common law protections of landowner's rights to the reasonable evolution/expansion of nonconforming use under Section 45(2):

- a. Kept a 12' x 20' section of existing shed (remove 18' portion for driveway)
- b. Moved house a few feet away from the South property line
- c. Made garage 4 feet deeper

As reference, this would have resulted in a net expansion of less than 500 sqft to the cottage with approx. 12% lot coverage and better clearance on south property

**Additional Application Requests:**

1. We respectfully request that the review of this application be taken with consideration as being part of the original A-34-2022 under Section 45(2) Expansion Non-Conforming Use.
2. Reimburse this Section 45 Application fee and waive building permit fee for a new shed, as the proposed shed would have been included in the previous application if we were not advised that we had to adhere to the 10% lot coverage ZBL.
3. Instead of signing a new Development Agreement, we ask that the existing Registered A-34-2022 Development Agreement be amended to only revise Schedule "C" for revised Site Plan and remove the South Property Planting Plan.
  - a. Signed drawings cannot be registered on LRO and are only referenced as on file at RLT Municipal Office
  - b. Avoid additional Legal Fees to re-register this agreement.