

## STAFF REPORT

**TO:** Committee of Adjustment

**FROM:** Cameron Watt, Planner I

**SUBJECT:** **A01124** - Joe Nethery and Celeste Phillips on behalf of Wuxly Realty Inc.  
820 River Road East  
Minor Variance – Definition Change, Expansion to a Non-Conforming Use,  
Expansion to a Non-Complying Use, Increased Building Height, Reduced Rear  
Yard Setback(s), Reduced Exterior Side Yard Setback

**DATE:** May 8, 2024

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### LANDS SUBJECT TO THE APPLICATION:

The subject lands are municipally addressed as: 820 River Road East, Town of Wasaga Beach, County of Simcoe, and legally described as FLOS CON 10 PT LOT 23 RP;51R13425 PART 1.

### PURPOSE AND EFFECT:

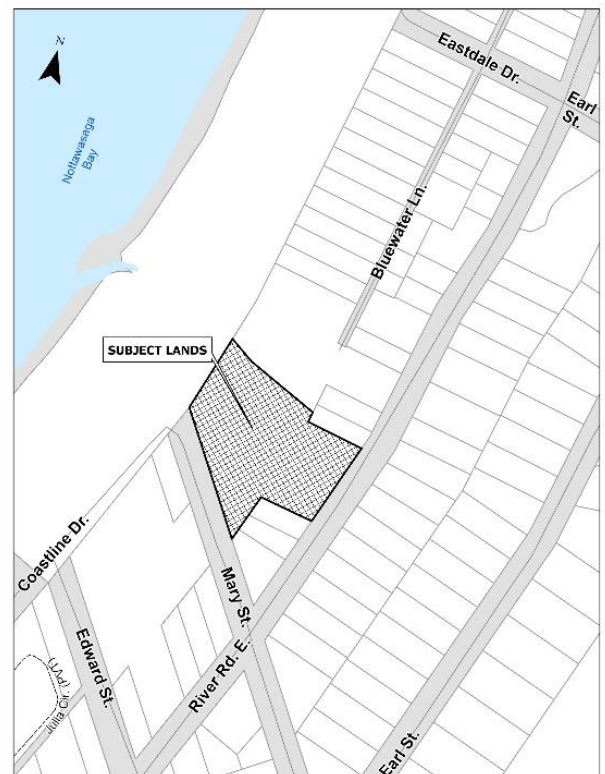
Application for Minor Variance has been submitted by Joe Nethery and Celeste Phillips on behalf of Wuxly Realty Inc., owner of the subject lands.

The applicant is seeking relief from the Town's Zoning By-Law 2003-60 as amended to facilitate the replacement and enlargement of three Tourist Establishment – Cabins, known as “Cabin 18”, “Cabin 2” and “Cabin 1” on the site plan submission.

The applicant requests relief from Section 27 “Definitions”, of Zoning By-law 2003-60 as amended, specifically:

Section 27.195.4 – To vary the definition of *Tourist Establishment - Rental Cabins* for “Cabin 18”, “Cabin 2” and “Cabin 1” as shown on the applicant's site sketch submission to mean a tourist establishment containing one rental unit in a detached building or two rental units in a building that has a common wall and/or floor between the units (i.e. horizontal and/or vertical division) which may have individual culinary and

**Figure 1: Site Location**



sanitary facilities together with an office serving the patrons of the tourist establishment and having a minimum of two (2) rental cabins on a lot, whereas the existing definition only allows for two rental units in a building that has a common wall between the units.

**To facilitate the replacement and enlargement of “Cabin 18”, as shown on the applicant’s site sketch submission, the applicant requests the following zoning relief:**

The applicant requests relief from Section 3.22 “Non-Conforming Uses”, of Zoning By-law 2003-60 as amended, specifically:

Section 3.22.3 - To allow for the replacement and enlargement of the existing tourist establishment - cabin and its continued use as such, whereas the Zoning By-Law provision would necessitate compliance with the use permission and performance standards of the applicable Zoning requirements.

The applicant requests additional relief from Section 3.23 – Non-Complying Lots, Buildings and Structures, of Zoning By-law 2003-60 as amended, specifically:

Section 3.23.3 - To replace and enlarge the existing tourist establishment- rental cabin with a new tourist establishment - rental cabin in the same location, that will retain an existing non-complying rear yard setback of 5.1 metres (16.73 ft.), whereas a minimum rear yard setback of 7.6 metres (24.93 ft.) is required in the Environmental Protection (EP) zone.

The applicant requests additional relief from Section 23 Environmental Protection (EP) Zone of Zoning By-law 2003-60 as amended, specifically:

Section 23.3.5 – To permit a maximum building height of 10 metres (32.80 ft.) for the new proposed tourist establishment rental cabin, whereas a maximum building height of 6 metres (19.68 ft.) is required in the Environmental Protection (EP) zone.

Section 23.3.4 – To permit a reduced rear yard setback of 5.1 metres (16.73 ft.) for the new proposed tourist establishment rental cabin, whereas a minimum rear yard setback of 7.6 metres (24.93 ft.) is required in the Environmental Protection (EP) zone.

**To facilitate the replacement and enlargement of “Cabin 2”, as shown on the applicant’s site sketch submission, the applicant requests the following zoning relief:**

The applicant requests relief from Section 15 – Accommodation Commercial (CA), of Zoning By-law 2003-60 as amended, specifically:

Section 15.3.4 b) – To permit a reduced exterior side yard setback of 0.5 metres (2.29 ft.), whereas a minimum exterior side yard setback of 6 metres (19.68 ft.) is required.

To facilitate the replacement and enlargement of “Cabin 1”, as shown on the applicant’s site sketch submission, the applicant requests the following zoning relief:

The applicant requests relief from Section 15 – Accommodation Commercial (CA), of Zoning By-law 2003-60 as amended, specifically:

Section 15.3.6 c) – To permit a reduced rear yard setback of 2.6m (8.53 ft.), whereas a minimum rear yard setback of 3m (9.84 ft.) is required.

**Figure 2: Proposed Site Plan Submission**



## RECOMMENDATION:

In consideration of the foregoing, the Planning Department supports application **A01124** subject to the following conditions being applied:

1. THAT the development will be substantially consistent with the site plan provided with the application, contained within “Appendix 1” of this report at the time of the building permit review.

2. THAT the existing private water / sewer servicing internal to the site is requested to be confirmed with a schematic plan / map to confirm how the internal servicing is configured.

#### COMMENTS:

Submitted From	Comments
Town of Wasaga Beach Public Works/Engineering Department	The Town's Public Works/Engineering department does not oppose the application. Please see 'Appendix 2' for a copy of the formal comments.
Nottawasaga Valley Conservation Authority (NVCA)	The Nottawasaga Valley Conservation Authority (NVCA) does not oppose the application. Please see 'Appendix 3' for a copy of the formal comments.
Wasaga Distribution Inc. (WDI)	WDI does not oppose the application. Please see 'Appendix 4' for a copy of the formal comments.

#### SUBJECT SITE:

The subject lands are located on the north-west side of River Road East, between the intersections of Mary Street and Earl Street. The subject lands have a frontage of approximately 62.5 metres (205ft.), a depth of approximately 116.1 metres (380.9ft.) and an area of approximately 8,530.2 square metres (91818.3 sq. ft.).

The surrounding neighbourhood area consists of lands that are zoned Environmental Protection (EP) to the west, Accommodation Commercial (CA) to the north, Residential Type One (R1) to the east and Residential Type Three – Exception Fifteen (R3-15) and Residential Type One (R1) to the south.

The subject lands are zoned Accommodation Commercial (CA) and Environmental Protection (EP) in within the Town's Comprehensive Zoning By-law 2003-60 as amended, and are designated 'Residential' and 'Natural Hazards' within the Town of Wasaga Beach Official Plan.

#### APPLICATION:

To facilitate the replacement and enlargement of three Tourist Establishment – Cabins, known as "Cabin 18", "Cabin 2" and "Cabin 1" on the site sketch submission, the applicant is requesting relief from Section 27 - Definitions of the Town's Zoning By-law, as summarized in the table below:

#### Section 27.195.4 – Tourist Establishment - Rental Cabins

Town of Wasaga Beach Zoning By-Law Definition	Requested Zoning Relief to Vary the Definition
Shall mean a tourist establishment containing one rental unit in a detached building	Shall mean a tourist establishment containing one rental unit in a detached

or two rental units in a building that has a common wall between the units which may have individual culinary and sanitary facilities together with an office serving the patrons of the tourist establishment and having a minimum of two (2) rental cabins on a lot.	building or two rental units in a building that has a common wall between the units <b>and/or floor between the units (i.e. horizontal and/or vertical division)</b> which may have individual culinary and sanitary facilities together with an office serving the patrons of the tourist establishment and having a minimum of two (2) rental cabins on a lot, whereas the existing definition only allows for two rental units in a building that has a common wall between the units.
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To facilitate the replacement and enlargement of “Cabin 18”, as shown on the applicant’s site sketch submission, the applicant requests the following zoning relief:

### Section 3.22.3 – Non-Conforming Uses

Section 3.22.3	Requested Zoning Relief
3.22.3 - The exterior of any building or structure which was lawfully used prior to the effective date of this By-law for a purpose not permissible within the Zone in which it is located, shall not be enlarged, extended, reconstructed or otherwise structurally altered, unless such building or structure is thereafter to be used for a purpose permitted within such Zone, and complies with all requirements of this Bylaw for such Zone.	To allow for the replacement and enlargement of the existing tourist establishment - cabin and its continued use as such, whereas the Zoning By-Law provision would necessitate compliance with the use permission and performance standards of the applicable Zoning requirements.

### Section 3.23 – Non-Complying Lots, Buildings and Structures

Section 3.23.3	Requested Zoning Relief
No person shall replace or make an addition to any existing building or structure which does not comply with the required yards of the Zone in which it is located.	Section 3.23.3 - To replace and enlarge the existing tourist establishment- rental cabin with a new tourist establishment - rental cabin in the same location, that will retain an existing non-complying rear yard setback of 5.1 metres

<p>However, the said building or structure may be replaced, repaired and/or renovated provided that:</p> <p>i) the deterioration or damage was beyond the control of the owner;</p> <p>ii) such replacement repair or renovation does not increase the height, area or volume of the original building or structure. Foundations are permitted provided that same does not allow for human habitation and that same foundation does not exceed 1.8 metres in total height, and;</p> <p>iii) all other applicable Zone and general provisions are complied with.</p>	<p>(16.73 ft.), whereas a minimum rear yard setback of 7.6 metres (24.93 ft.) is required in the Environmental Protection (EP) zone.</p>
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### **Section 23 - Environmental Protection (EP) Zone:**

<b>Section 23.3.5 – Maximum Building Height</b>	<b>Requested Zoning Relief</b>
Height of Building (maximum): 6.0 m (19.68 ft.)	Height of Building (Maximum): 10 m (32.8 ft.)

<b>Section 23.3.4 – Rear Yard Setback Minimum</b>	<b>Requested Zoning Relief</b>
Rear Yard Depth (Minimum): 7.6 m (24.93 ft.)	Rear Yard Depth (Minimum): 5.1 metres (16.73 ft.)

To facilitate the replacement and enlargement of “Cabin 2”, as shown on the applicant’s site sketch submission, the applicant requests the following zoning relief:

### **Section 15 – Accommodation Commercial (CA) Zone:**

<b>Section 15.3.4 b)</b>	<b>Requested Zoning Relief</b>
Exterior Side Yard Width (minimum): b) any other use 6 m	Exterior Side Yard Width (minimum): 0.5 metres (2.29 ft.)

To facilitate the replacement and enlargement of “Cabin 1”, as shown on the applicant’s site sketch submission, the applicant requests the following zoning relief:

### **Section 15 – Accommodation Commercial (CA) Zone:**

Section 15.3.6 c)	Requested Zoning Relief
15.3.6 Rear Yard Depth (minimum): c) any other use where it abuts any other Zone 3 m (9.84 ft.)	Rear Yard Depth (minimum): 2.6m (8.5 ft.)

## ANALYSIS:

### Planning Act, R.S.O. 1990, c. P.13

The Ontario *Planning Act* requires that in making planning decisions, the Committee must have regard for matters of Provincial Interest, as outlined by Section 2 of the Act, and the Provincial Policy Statement, as outlined by Section 3 of the Act. Based on review of the pertinent policies, Staff have no concerns with respect to the provisions of Section 2 of the Ontario *Planning Act*.

### Provincial Policy Statement (2020)

Section 3(5) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, provides that the Council of a municipality, or a Committee of Adjustment, in exercising any authority that affects a planning matter, shall be consistent with the policy statements issued by the Province. Upon review of the policies outlined in the Provincial Policy Statement (2020), it is the opinion of Planning staff that the Minor Variance, if granted, will be consistent with this subsection of the *Planning Act*.

### A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020

Section 14(1) of the *Places to Grow Act*, S.O. 2005, c.13, as amended, provides that a decision under the *Planning Act* that relates to a growth plan area shall conform with a growth plan that applies to that growth area. Planning Services staff are of the opinion that the Minor Variance, if granted, will conform to *A Place to Grow: Growth Plan for the Greater Golden Horseshoe (August 2020)*.

### County of Simcoe Official Plan

The subject lands are designated “Settlement” in the Official Plan for the County of Simcoe. The County of Simcoe Official Plan contains policies relating to the orderly development of those areas that are designated as Settlement. The County of Simcoe has provided no comments with respect to this application. However, it is the opinion of Planning Services staff that the Minor Variance, if granted, will conform to the County of Simcoe Official Plan.

### Maintains the General Intent of the Official Plan

The subject lands are designated ‘Residential’ and ‘Natural Hazards’ within the Town of Wasaga Beach Official Plan. Notwithstanding these designation categories, the current use on the property is commercial in nature and consists of a “Tourist Establishment – Rental Cabins” use.

### Deemed Conformity

In cases where the Official Plan designation does not align with the Zoning of a property as per Section 24(4) - *Deemed Conformity* of the Ontario Planning Act, if a By-Law is passed under the provisions that govern Zoning By-Law (Section 34) and the By-Law is not appealed or amended by the Ontario Land

Tribunal (OLT), the By-Law shall be deemed to be in conformity with the Official Plan, once the Bylaw comes into effect.

The new replacement Tourist Establishment – Rental Cabin identified as “Cabin 2” is not a permitted use within the ‘Residential’ Official Plan designation category. However, this portion of the property is zoned Accommodation Commercial (CA) in the Town’s Zoning By-Law, which permits a *Tourist Establishment - Rental Cabin(s)* use. Based on subsection 24(4) of the *Planning Act*, Planning staff find that the proposed development known as “Cabin 2” would be deemed to conform with the Town’s Official Plan.

The new replacement Tourist Establishment – Rental Cabins identified as “Cabin 1” and “Cabin 18” are located within the ‘Natural Hazards’ designation. As per Section 12.3.1 of the Town’s Official Plan, the Natural Hazards designation permits: *Redevelopment of existing dwellings, structures, new accessory buildings, and additions to existing buildings in accordance with the Provincial, watershed, and local principles, standards, and procedures.*

The following Natural Hazard policies in the Town’s Official Plan are also applicable to the proposed development known as “Cabin 1” and “Cabin 18”: 12.5 *Shoreline Hazards – Georgian Bay*, 12.6 *Erosion Hazards – River and Stream Systems*, 12.7 *Flooding Hazards – River and Stream Systems*. Each of these applicable policies refer to the need for an applicant to submit technical studies to identify and delineate the precise location of hazard lands on the subject lands to the satisfaction of the Conservation Authority.

In conjunction with the above noted Official Plan policies, The Nottawasaga Valley Conservation Authority (NVCA) reviewed the applicant’s submission materials, which included a Shoreline Hazard Assessment and Scoped Environmental Impact Assessment. These submission materials were reviewed as per the NVCA’s delegated responsibility from the Province to represent provincial interests regarding natural hazards identified under section 3.1 of the Provincial Policy Statement (PPS, 2020) and as a regulatory authority under Ontario Regulation 41/24, and as a public body under the Planning Act as per CA board approved policies. The NVCA does not oppose the applicant’s requested relief. A formal copy of the NVCA’s comments may be found in ‘Appendix 3’. In light of the NVCA’s comments, Planning staff are satisfied that the proposal maintains conformity with the applicable Natural Hazards policies.

Section 12.4.6 of the Town’s Official Plan further states that: *In the Comprehensive Zoning By-law, existing uses in areas designated “Natural Hazards”, may be recognized as legally conforming despite the “Natural Hazards” designation in the Official Plan and the subsequent zoning in the zoning by-law.*

The applicant has requested zoning relief through sections Section 3.22.3 – Non-Conforming Uses to expand the existing non-conforming Tourist Establishment - Rental Cabin known as “Cabin 18”.

Planning staff are of the opinion that the requested relief demonstrates conformity with the Town’s Official Plan policies.



### **Maintains the General Intent of the Zoning By-law**

The subject lands are zoned Accommodation Commercial (CA) and Environmental Protection (EP), within the Town's Zoning By-Law 2003-60, as amended. The new replacement *Tourist Establishment – Rental Cabins* known as Cabins “1” and “2” are located within the Accommodation Commercial (CA) zone category. “Cabin 18” is located within the Environmental Protection (EP) zone category.

The replacement *Tourist Establishment - Rental Cabins* known as Cabins “1” and “2” are a permitted use within the Accommodation Commercial (CA) zone. Cabin “18” is not a permitted use within the existing Environmental Protection (EP) zone category. However, the applicant has requested zoning relief through the Town's Zoning By-law provisions for non-conforming uses to allow for the use to be permitted in the Environmental Protection (EP) zone.

The requested relief for “Cabin 18”, “Cabin 2” and “Cabin 1” is outlined above.

To facilitate the replacement and enlargement of three Tourist Establishment – Cabins, known as “Cabin 18”, “Cabin 2” and “Cabin 1” on the site plan submission the applicant requests relief from Section 27 “Definitions”, of Zoning By-law 2003-60 as amended, specifically:

Section 27.195.4 – To vary the definition of *Tourist Establishment - Rental Cabins* for “Cabin 18”, “Cabin 2” and “Cabin 1” as shown on the applicant's site sketch submission to mean a tourist establishment containing one rental unit in a detached building or two rental units in a building that has a common wall between the units **and/or floor between the units (i.e. horizontal and/or vertical division)** which may have individual culinary and sanitary facilities together with an office serving the patrons of the tourist establishment and having a minimum of two (2) rental cabins on a lot, whereas the existing definition only allows for two rental units in a building that has a common wall between the units.

Planning staff note that the initial relief being sought from the *Tourist Establishment – Rental Cabins* definition (as outlined in the public meeting notice) requested relief for a “vertical separation (multiple floors)”. This requested change in language to the definition has been revised, and now requests that the following language be added to the *Tourist Establishment – Rental Cabins* definition, instead: “and/or floor between the units (i.e. horizontal and/or vertical division)”. The intent of the change in language to the relief being sought by the applicant is to allow for greater flexibility for the final building design.

The requested relief for the change to the language in the *Tourist Establishment – Rental Cabins* definition meets the intent of the Zoning By-Law provision, and is simply for the purpose expanding the language in definition to facilitate the proposed development. The change in definition will allow for the Tourist Establishment – Rental Cabins definition to include two rental units in a building with a common wall “and/or floor between the units (i.e. horizontal and/or vertical division)”, whereas the existing definition only allows for a separation via a “common wall”.

To facilitate the replacement and enlargement of “Cabin 18”, the zoning relief being sought is outlined as follows:

Section 3.22.3 - To allow for the replacement and enlargement of the existing tourist establishment - cabin and its continued use as such, whereas the Zoning By-Law provision would necessitate compliance with the use permission and performance standards of the applicable Zoning requirements.

Section 3.23.3 - To replace and enlarge the existing tourist establishment- rental cabin with a new tourist establishment - rental cabin in the same location, that will retain an existing non-complying rear yard setback of 5.1 metres (16.73 ft.), whereas a minimum rear yard setback of 7.6 metres (24.93 ft.) is required in the Environmental Protection (EP) zone.

Section 23.3.5 – To permit a maximum building height of 10 metres (32.80 ft.) for the new proposed tourist establishment rental cabin, whereas a maximum building height of 6 metres (19.68 ft.) is required in the Environmental Protection (EP) zone.

Section 23.3.4 – To permit a reduced rear yard setback of 5.1 metres (16.73 ft.) for the new proposed tourist establishment rental cabin, whereas a minimum rear yard setback of 7.6 metres (24.93 ft.) is required in the Environmental Protection (EP) zone.

Sections 3.22 and 3.23 of the Town’s Zoning By-Law outline permissions for non-conforming and non-complying uses. The intent of these provisions is to limit the expansion of non-conforming and non-complying uses and to ensure that an existing non-conforming/non complying status is not worsened through a proposed development.

The above noted relief sought through sections 3.22.3 and 3.23.3 of the Town’s Zoning By-Law will allow for the replacement and enlargement of the existing tourist establishment rental cabin known as “Cabin 18”, that is located in the Environmental Protection zone (EP) zone. Planning staff recommend that this requested relief will not worsen the existing legal non-conforming/non-complying status of the existing building, and will rather replace and repair the building to a modern standard of development.

The additional relief sought through Sections 23.3.5 and 23.3.4 will increase the total height of “Cabin 18” to 10 metres (32.80 ft.) whereas a maximum of 6 metres (19.68 ft.) is required and will further reduce the rear yard setback to 5.1 metres (16.73 ft.), whereas a minimum rear yard setback of 7.6 metres (24.93 ft.) is required in the EP zone. The requested relief meets the intent of the above noted provisions. The increase in height will have a minimal impact on the surrounding lands, as the neighboring development is well setback from the cabin in all directions. The reduced rear yard setback will allow for sufficient space for property maintenance and amenity area access. As the subject lands abut the beach at the rear of the property, the impact of the reduced rear yard for the cabin is negligible.

To facilitate the replacement and enlargement of “Cabin 2”, the relief being sought is outlined as follows:

Section 15.3.4 b) – to permit a reduced exterior side yard setback of 0.5 metres (2.29 ft.), whereas a minimum exterior side yard setback of 6 metres (19.68 ft.) is required.

The requested relief meets the intent of the exterior side yard setback provision. Access to the building for maintenance and amenity purposes is available from all other sides of the building. Additionally, the building will maintain a sufficient distance from the travelled roadway (Mary Street), as the cabin will be setback approximately 7-8 metres from the road, as a result of the public right of way/boulevard.

To facilitate the replacement of “Cabin 1”, the relief being sought is outlined as follows:

Section 15.3.6 c) – To permit a reduced rear yard setback of 2.6m, whereas a minimum rear yard setback of 3m is required.

The requested relief meets the intent of the rear yard setback provision. The variance represents a minor deviation from the applicable setback standard. Access via the rear yard will remain largely unchanged and will provide sufficient space for property maintenance and access to the surrounding amenity areas. As the building abuts the beach at the rear of the property, the overall impact is negligible.

The Town’s Public Works/Engineering department does not oppose the requested variances. A copy of the formal comments may be found under ‘Appendix 2’.

Planning staff submit that the requested relief generally meets the intent of the Zoning By-law.

### **Desirable for the Appropriate Development of the Land**

Planning staff are of the opinion that the variance(s) to facilitate the replacement and enlargement of three Tourist Establishment – Cabins, known as “Cabin 18”, “Cabin 2” and “Cabin 1” on the site sketch submission, is not anticipated to impact the proper use of the land, the neighbourhood, nor the municipality. Planning staff suggest that the variance is considered desirable and appropriate for the development of the land.

As noted above, the replacement and enlargement of the cabins demonstrate conformity with the Town’s Official Plan policies and comply with the applicable Zoning requirements.

### **Considered Minor in Nature**

Planning staff are of the opinion that the variance requested can be considered minor in nature, and would result in minimal impact relative to a form of development that would otherwise comply with existing provisions of the Zoning By-law.

### **CONCLUSION:**

In consideration of the above, the Planning Department supports application **A01124** for the lands municipally addressed as 820 River Road East. Should the Committee choose to approve application **A01124**, Planning staff recommend this approval also be subject to the above noted conditions.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "C. Watt", is positioned above the printed name.

Cameron Watt  
Planner I

Appendix 1: Applicant's Site Plan Submission

Appendix 2: Town of Wasaga Beach Public Works/ Engineering Comments

Appendix 3: Nottawasaga Valley Conservation Authority (NVCA) Comments

Appendix 4: Wasaga Distribution Inc. (WDI) Comments

Site Photos

Site Photo 1 – “Cabin 1”



Site Photo 2 – “Cabin 2”





Site Photo 3 – “Cabin 18”

