

**STRATHCONA COUNTY
Subdivision and Development Appeal Board**

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Appeal File Number: 2021-03
Application Number: 2021-0512-DP
Appeal Against: Development Authority of Strathcona County
Appellant: Roger and Gwen Castle
Applicant: Jeff Hass and Bernice Garn
Landowner: Patrick and Lisa Edens
Affected Persons: none
Date and Location of Hearing: August 26, 2021
at Sherwood Park, Alberta
Date of Decision: September 3, 2021
SDAB Members: Liam Kelly, Chair
Aaron Corser
Grace O'Brien
Gary Peckham
Richard Paterson

NOTICE OF DECISION

[1] This is the decision of the Strathcona County Subdivision and Development Appeal Board (the "SDAB") on an appeal filed with the SDAB pursuant to sections 685 and 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

- [2] The appeal is from the decision of the Development Authority of Strathcona County ("Development Authority") to issue a development permit with conditions for a Proposed Accessory Development Detached garage (7.92m x 8.53m) (the "Development") on the property legally described as Lot 12, 13, Block 3, Plan 340KS and municipally described as 89, 52059 Range Road 220 (the "Property").
- [3] The appellant is: Roger and Gwen Castle (the "Appellant").
- [4] The applicant for the Development Permit is Jeff Hass and Bernice Garn (the "Applicant").
- [5] Appendix "A" attached to this decision includes a list of printed materials received by the SDAB related to this appeal, and a list of persons who made oral presentations at the hearing.

PROCEDURAL MATTER - HEARING PROCESS

- [6] There were no objections to the hearing procedures as set out by the Chair at the start of the hearing.

PROCEDURAL MATTERS - SDAB COMPOSITION

- [7] There were no objections to any of the SDAB members hearing this appeal.

PROCEDURAL MATTERS - SDAB JURISDICTION

- [8] There were no objections raised related to the jurisdiction of the SDAB to hear this appeal.

ISSUE

- [9] The Appellant raised the following grounds of appeal:
 - a. The proposed development is not in keeping with the character of the neighbourhood;
 - b. The proposed development will negatively impact the surrounding environment and water supply;
 - c. The proposed development will negatively impact the value of their property; and

- d. The proposed development interferes with the use and enjoyment of their property.

[10] The issue before the SDAB arising from the above grounds of appeal is should the decision of the Development Authority be confirmed?

SUMMARY OF THE DEVELOPMENT AUTHORITY'S POSITION

[11] On July 9, 2021, the Development Authority issued development permit 2021-0512 DP (the "Development Permit") for an Accessory Development – Detached Garage (7.92 m x 8.53 m) (the "Proposed Development"), subject to conditions, on Lot 12, 13, Block 3, Plan 3407KS.

[12] The Development Authority submits that the SDAB should confirm the development permit as issued.

[13] The Development Authority submits:

- a. This appeal is the result of a development permit application submitted for detached garage (7.92m x 8.53m) on Lot 12, 13, Block 3, Plan 3407KS;
- b. The subject property is a 1003.50 m² (10,801.58 sq. ft) parcel located in Half Moon Lake;
- c. The subject property is currently districted as RH – Hamlet District pursuant to Land Use Bylaw 6-2015;
- d. The property currently supports a single dwelling with attached garage and uncovered deck, and one accessory building (shed);
- e. The subject property is currently districted as RH – Hamlet District, where the Proposed Development is a permitted use;
- f. The RH District applies to existing hamlets that do not have an approved Area Structure Plan;
- g. The RH District provides a broad range of non-residential discretionary uses that are traditional in local service centres and lakefront hamlets;
- h. The development permit application for the Proposed Development was submitted by the Appellant on June 28, 2021;
- i. The Appellant submitted A Real Property Report with the application as a site plan to show the location of the Proposed Development;

- j. The Applicant submitted a floor plan and elevation drawings for the Proposed Development;
- k. The submitted plans show the height of the detached garage, including the pitch of the roof and the dimensions of the doors and window;
- l. The Applicant provided a letter of intent with the development permit application, which indicated that the Proposed Development would be used as a workshop and a storage space for a boat, trailer, truck, and recreational equipment;
- m. The Applicant provided additional information detailing that a Pencil Well was located on the subject property;
- n. The subject property also has two septic systems located adjacent to the dwelling in the north-west yard, which do not allow for Proposed Development in this location;
- o. It was determined that the Proposed Development does not conform to the regulations of Land Use Bylaw 6-2015 in terms of the required setback from the front lot line;
- p. Land Use Bylaw 6-2015 requires a minimum setback of 18.0m from the front lot line in the Development Regulations for the RH – Hamlet District (section 9.15.6);
- q. The Proposed Development would be 1.0m from the front lot line, resulting in a deficiency of 17.0m (a 94.4% variance);
- r. The Land Use Bylaw, Section 3.3.8 provides that where residential lots are located along a lakeshore, the Development Authority may allow the location of an accessory building or structure in a front yard along a road provided it is consistent with the development in the surrounding area;
- s. The proposed Accessory Development is located on a lot that is located along a lakeshore (Half Moon Lake);
- t. The surrounding area of the Proposed Development has existing accessory buildings located in the front yard along a road;
- u. Part 2, Section 2.16.1 (Variances) of the LUB states that the Development Authority may grant a variance and approve a development permit for a permitted use or discretionary use, with or without conditions, which does not comply with the regulations of the LUB, provided that the Development Authority determines that: the proposed development is consistent with the general purpose or character (urban or rural) of the Zoning District; the proposed

development conforms with the uses prescribed by this Bylaw for that lot or building; the proposed development is appropriate to the size of the lot; the proposed development would not unduly interfere with the amenities of the neighbourhood or would not materially interfere with or affect the use, enjoyment or value of adjacent parcels of land; there are physical factors unique to the land which would result in practical difficulties for the proposed development to comply with the provisions of the LUB;

- v. The Proposed Development has been designed in a manner that would be complimentary or compatible to the adjoining sites in the neighborhood and is consistent with the general purpose of the RH District;
- w. There are physical factors unique to the subject property which would result in practical difficulties for the Proposed Development to comply with the provisions of the LUB: the location of the lot being along a lakeshore and the Top-of-Bank setback requirement of 30m; the location of the Pencil Well and two Septic Systems limits the location of the Proposed Development along the north-westerly side of the single dwelling; and
- x. As a result of these considerations, the Development Permit was approved on July 9, 2021, with several conditions (NB: the conditions are set out in the July 9, 2021 Development Approval letter).

SUMMARY OF THE APPELLANT'S POSITION

[14] The Appellant submits:

- a. The objectives of Strathcona County statutory plans are intended to maintain and enhance quality of life and provide a diversity of choice, lifestyle and environment, but the Proposed Development does not align with these objectives;
- b. The Proposed Development will significantly obscure the view of Half Moon Lake and the foliage on the north and south shores;
- c. The LUB, General Regulations, section 3.8.4 states: "where a lot abuts a lake shore, the front yard shall be the yard abutting the road" but the placement of an oversized building on a previously professionally landscaped yard is a poor option for diversity of choice, lifestyle and the community environment;
- d. The Proposed Development is in a unique and environmentally fragile community;

- e. The Proposed Development has the potential to negatively impact the ecosystem and may negatively impact the underground water source;
- f. The Proposed Development will require excavation which will result in disturbance to the environment and existing wells which will disrupt ground water sources including wells during construction and may negatively impact Half Moon Lake;
- g. The Proposed Development is too large and will negatively impact the Appellant's view and create safety issues for children in the neighbourhood because of the narrow street;
- h. The curb appeal of the Appellant's property will be negatively impacted and result in a lower resale value;
- i. A consultation with two relators resulted in one opinion that said the Proposed Development would not impact the resale value of the Appellant's property and one opinion that said there would be a negative impact to the resale value;
- j. The location of the Proposed Development will have a negative impact on the street view of the Appellant's property and negatively impact the enjoyment of the Appellant's property; and
- k. The Appellants were disappointed that there was not more opportunity for consultation about the Proposed Development prior to the Appellant submitting the development permit application for the Proposed Development.

SUMMARY OF THE APPLICANT'S POSITION

[15] The Applicant submits:

- a. The Proposed Development is for a detached garage with a height of 4.48 m. (14'7" measured to the midpoint as the roof pitch is 5/12) which complies with the maximum height allowed (4.5 m) in the LUB;
- b. The Proposed Development is a consideration related to the Applicant's purchase of the subject property;
- c. The Proposed Development was not intended to upset the neighbours or cause any strife in the community;
- d. The Proposed Development would be used to store a truck, boat, trailer, and other recreational equipment;

- e. The existing shed on the subject property will be removed;
- f. The Proposed Development has a ground floor area of 67.55 m² which complies with the maximum ground floor allowed in the LUB for accessory structures (68 m²).
- g. The Proposed Development will comply with the LUB requirement that the exterior complement the principal dwelling in terms of design, colour, and exterior finish to the Development Authority's satisfaction;
- h. The Proposed Development will have a site coverage of 28.82% (includes the house with attached garage and detached garage) but does not include the uncovered deck and this complies with the definition of "site coverage" in the LUB and with the limit for site coverage of 40%;
- i. The Proposed Development setback is 1.0 m to the front lot line, but a variance was granted in accordance with 3.3.8. of the LUB which provides that "Where residential lots are located along a lakeshore, the Development Authority may allow the location of an accessory building or structure in a front yard along a road provided that it is consistent with development in the surrounding area";
- j. The Development Authority determined that there are several examples of similar development to the Proposed Development located within this subject district;
- k. The Proposed Development is consistent with development in the surrounding area;
- l. There are several examples of similar development located within the subject district: i.e. other properties have accessory buildings on the front yard;
- m. The location of the Pencil Well on the subject property prevents the Proposed Development from being set back further to the rear of the subject property;
- n. The features of the subject property resulted in a variance being granted for the setback;
- o. The Proposed Development will include a concrete floating slab on grade, with ground floor area of 67.55 m², designed and sealed by a professional engineer;

- p. Ground water and underground water sources and the environmental impact of the Proposed Development will be considered throughout the development;
- q. The Proposed Development does not require excavation below the surface of the ground, e.g. such as a basement or underground cavity;
- r. Any landowner also has a legal right to build a fence or plant a tree line at the front lot line of their respective property in this neighbourhood (the neighboring properties numbers 85 and 91 are two examples of properties with a treed front lot line);
- s. Having a treed front lot line also completely obscures the view of the foliage on the north and south shores, thus eliminating any view of the lake from the opposite side of the road;
- t. For these reasons, the Proposed Development complies with the LUB regulations except for the setback which is granted by a variance;
- u. The Proposed Development is consistent with the surrounding area and properties;
- v. The Development Authority appropriately used their discretion in granting the variance to accommodate the features and limitations of the subject property.

FINDINGS

[16] The SDAB finds:

- a. The Proposed Development is for an Accessory Development – Detached Garage (7.92m x 8.53m) on Lot 12, 13, Block 3, Plan 3407KS;
- b. The subject property is a 1003.50 m² (10,801.58 sq. ft) parcel located in Half Moon Lake;
- c. The subject property includes a single dwelling with attached garage and uncovered deck, and one accessory building (shed);
- d. The subject property has two septic systems located adjacent to the dwelling in the north-west yard as well as a pencil well;
- e. The subject property is districted as RH – Hamlet District pursuant to Land Use Bylaw 6-2015;

- f. The Proposed Development is for a permitted use but does not conform to the setback from the front line in the RH – Hamlet District as set out in the LUB;
- g. The LUB requires a minimum setback of 18.0m from the front lot line in the Development Regulations for the RH – Hamlet District (section 9.15.6), but the proposed development would be 1.0m from the front lot line, resulting in a deficiency of 17.0m (94.4% variance);
- h. The LUB (section 3.3.8) provides that the Development Authority may issue a variance for the location of an accessory building or structure in a front yard along a road, where residential lots are located along a lakeshore, provided the accessory building or structure is consistent with the development in the surrounding area; and
- i. On July 9, 2021, the Development Authority issued the Applicant a development permit for the proposed development that included several conditions.

DECISION

- [17] The appeal is denied and the decision of the Development Authority to approve and to issue the development permit for the Proposed Development is confirmed with an additional condition requiring the Proposed Development to comply with any and all provincial well setback requirements.

REASONS FOR THE DECISION

- [18] Section 687 (3)(b) and (d) of the MGA states that the SDAB:

Must have regard to but is not bound by the subdivision and development regulations;

May make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion, the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

- [19] The Appellant submits that the Proposed Development will have a negative impact on the environmental features of the neighbourhood, specifically the ground water and the lake and will negatively impact the safety of the neighbourhood:

- a. The SDAB was not persuaded that there would be negative environmental or safety impacts resulting from the Proposed Development because these submissions were not supported with evidence.
- b. The SDAB notes that the Development Permit includes a condition that requires the Applicant to ascertain and comply with the requirements of other municipal bylaws, easements, environmental reserve easements, covenants, conversation agreements, development agreements, or Provincial or Federal statues or regulations and that this condition provides further safeguards for the environment.
- c. As part of its decision to confirm the Development Permit, the SDAB has added an additional condition requiring the Applicant to comply with any regulations related to the Pencil Well on the subject property and this condition provides further assurance that the water supply will not be negatively impacted by the Proposed Development.

[20] The Appellant submits that the Proposed Development will have a negative impact on the value of their property:

- a. The SDAB concluded that the Appellant did not provide evidence to support this claim since they verbally presented two conflicting realtor opinions on the impact to the value or resale value of the Appellant's property.
- b. The SDAB concluded that the reported opinion of a realtor that there would be a negative impact on the value of the Appellant's property was insufficient support for this submission.

[21] The Appellant submits that the Proposed Development is not in keeping with the character of the surrounding area and that the Proposed Development will unduly interfere with the enjoyment of the Appellant's property:

- a. The SDAB was not convinced by the Appellant's argument because the Applicant provided several photos of similar developments in the surrounding area and thus the SDAB concluded that the Proposed Development is consistent with other properties in the surrounding area.
- b. The SDAB was convinced that other allowable developments in the surrounding area, such as planting of trees, would have a similar visual impact as the Proposed Development in terms of obscuring the view of the lake.

- c. The SDAB was not convinced that the view from the Appellant's property was unduly impacted or that the Appellant had a reasonable expectation that the view may be altered as a result of ongoing development permitted in the zoning district.
- d. The SDAB was persuaded by the Applicant's testimony that they were attentive to the requirements related to the Proposed Development and would continue to abide by such requirements.
- e. The SDAB was convinced that both parties were positive community members and the SDAB encourages ongoing communication between the parties on this issue.

DATED at Strathcona County, in the Province of Alberta, this 3 day of September 2021.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD



Liam Kelly, Chair

Pursuant to section 688 of the *Municipal Government Act*, RSA 2000, c M-26, an appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to this decision of the Subdivision and Development Appeal Board.

APPENDIX "A"
List of Submissions

| Printed Materials: | Consisting of: |
|---|-----------------------|
| Application file | 13 pages |
| Decision of Development Officer | 4 pages |
| Notice of Appeal | 6 pages |
| Notice of Hearing | 7 pages |
| Submission received from the Development Officer prior to hearing but after August 18, 2021 (PowerPoint Presentation, speaking notes) | 34 pages |
| Submission received from the Applicant prior to hearing but after August 18, 2021 (photographs) | 31 pages |

| Persons who made oral presentations at the hearing: | |
|--|-----------------------|
| Name: | Capacity: |
| Meghan Thompson | Development Authority |
| Kendra Andrews | Development Authority |
| Roger and Gwen Castle | Appellant |
| Jeff Hass and Bernice Garn | Applicant |