



**SUBDIVISION AND
DEVELOPMENT
APPEAL BOARD**

**DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD
OF LAC LA BICHE COUNTY**

DEVELOPMENT PERMIT 2023-042

BETWEEN:

MILES HOFFMAN

Appellant

and

LAC LA BICHE COUNTY

Development Authority

Board Members: Kevin Paré – Presiding Officer
Linda Lauzon
Ken Warkentin

Hearing Date & Time: Monday, July 24 - 6:30 p.m.
Note: The hearing was closed on Thursday, July 27, 2023.

Hearing Location: Council Chambers, McArthur Place
2nd Floor, 10307 – 100 Street, Lac La Biche

Appeared on behalf of the Applicant(s):
Chris Mazurak

Appeared on behalf of the Appellant(s):
Miles Hoffman
Janet Hoffman

Appeared on behalf of the Development Authority:
Pam Routhier, Development Officer
Diane Cloutier, Manager, Planning & Development

Others in Attendance:
Heather Reid, Subdivision and Development Appeal Board Clerk

Executive Summary: This is an appeal with respect to the Lac La Biche County Development Authority decision that approved development application 2023-042 for an Accessory Building

with a variance granted to the Minimum Side Yard (East) to 0.4 m (1.4 ft.), *varied from* 1.0 m (3.3 ft.). The subject land is located at 121, 63303 HWY 867 (Lot 42, Block 1, Plan 8122115) – zoned Country Residential District (CR).

The appeal is allowed and the decision of the Development Authority is revoked.

The Board refuses to grant a development permit with variance for the accessory building.

Introduction and Background on the Application

- [1] The Subdivision and Development Appeal Board (“the Board”) received a written appeal from Mr. Miles Hoffman with respect to a decision of the Municipal Planning Commission (Development Authority) to approve development application 2023-042 for an Accessory Building with a variance granted to the Minimum Side Yard (East) to 0.4 m (1.4 ft.), *varied from* 1.0 m (3.3 ft.).
- [2] The applicants, Chris and Vera Mazurak, filed the development application for an existing accessory building with a requested setback variance of the Minimum Side Yard (East) to 0.4 m (1.4 ft.), *varied from* 1.0 m (3.3 ft.), a variance of 60% of the regulations set out in the Lac La Biche County Land Use Bylaw (LUB) 17-004, as amended.
- [3] The Development Authority approved the application, allowing the Accessory Building with variance subject to conditions. The LUB stipulates that the approval of the development application with proposed variance is subject to an appeal period.

Jurisdictional Matters

- [4] The Subdivision and Development Appeal Board derives its authority under the *Municipal Government Act*, RSA 2000, cM-26 (“MGA”). Planning and Development is addressed in Part 17 of the MGA.
- [5] The Board is established by Lac La Biche County Bylaw 21-007 – Subdivision and Development Appeal Board. The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under the MGA and the Lac La Biche County Land Use Bylaw.
- [6] There were no objections or preliminary matters raised during the course of the hearing and the Board proceeded to hear the merits of the appeal, as outlined below.

Facts

- [7] Several items were accepted as fact by the Board:
 1. The subject parcel is legally described as Lot 42, Block 1, Plan 8122115 (121, 63303 HWY 867) and is zoned Country Residential District (CR) under the Land Use Bylaw.

2. The parcel and surrounding area is depicted in the image below, the subject parcel is outlined in yellow. The parcel is abutted by County Residential District (CR) lots to the west and east and an Agricultural (AG) lot to the South. A road inside the subdivision referred to as Fork Lake Drive is located to the north. The proposed development (accessory building) is located along the side yard (east) property line – adjacent to the appellant's (Mr. Hoffman) side yard property line.



3. On May 19, 2023, development application 2023-042 was submitted for an existing accessory building with a variance requested to the minimum side yard on the east side.
4. On May 26, 2023, a site inspection was conducted by Kika Mukuninwa, Planning & Development staff. Photos were taken of the location of the accessory building.
5. On June 14, 2023, the Development Authority (the Municipal Planning Commission (MPC)) gave conditional approval for an accessory building with a variance to the Minimum Side Yard (East) to 0.4 m (1.4 ft.), varied from 1.0 m (3.3 ft.), pending the lapsing of the 21-day appeal period. A notification letter was sent to the applicant advising of the conditional approval.
6. On June 14, 2023, the Planning & Development department sent notification letters to adjacent property owners within 60.0 meters of the subject property in accordance with Section D1.10(2) of the Land Use Bylaw, and Section 685(2) of the Municipal Government Act, which allows for 'any person affected by an order, decision or development permit made by a development authority to appeal the decision.
7. On June 29, 2023, an appeal of the proposed development was received by the Clerk of the Subdivision and Development Appeal Board. Mr. Miles Hoffman submitted a written appeal of the proposed development with the applicable appeal fee.
8. On July 6, 2023 the Notice of the Hearing was emailed to the Applicant, Appellant and the Development Authority. Notices of hearing were placed in the mail on July 7, 2023 to the Applicant, Appellant, Development Authority and the adjacent landowners in accordance with the Land Use Bylaw and the MGA.

9. Notice of the SDAB Hearing was advertised in the July 11, 2023 and July 18, 2023 editions of *Lakeland This Week* and posted on the Lac La Biche County website.

Submission from the County's Planning and Development Department

- [8] The Planning & Development Department, represented by Pam Routhier and Diane Cloutier, summarized the application, as follows:
1. Lot 42 is located in Fork Lake Estates subdivision, with access off Fork Lake Drive.
 2. The applicants stated in their variance request that the Accessory Building (boat storage structure) is over thirty (30) years old and was built by the previous owners.
 3. On June 14, 2023, the Municipal Planning Commission (MPC) gave conditional approval for the Accessory Building with a variance to the side yard setback (east) from 1.0 m (3.3 ft.) to 0.4 m (1.4 ft.), a variance of sixty percent (60%) pending the elapsing of the 21-day appeal period.
 4. On June 14, 2023, a Notification Letter was sent to the applicant and adjacent landowners.
- [9] In response to questions from the Board, the Planning & Development department noted that no Real Property Report had been received to date, and further, that their department does not locate pins for development applications. The County's Enforcement Services department has requested a Real Property Report from the applicants, however it had not been received as of the hearing date. A previous development application for the accessory building could not be located, but it was acknowledged that the County was not always the development authority for this property. As it relates to the setback measurement, in accordance with the Land Use Bylaw, measurements are typically done from the exterior wall to the property line.

Position of the Applicant – Chris Mazurak

- [10] Mr. Mazurak provided a written submission in advance of the hearing and a verbal presentation to the Board. Mr. Mazurak's submission and presentation addressed the following:
1. The applicants have owned the seasonal lake lot for 21 years. All structures on the property including a cabin, a 12x30 shed, covered fire pit area and overhang for boat storage were in place when the property was purchased in 2002. The effective age of all the structures is at least 35 years old. When the property was purchased, it was bush and trees other than the driveway and around the structures.
 2. The lot to the west, consisting of trees and bush, was unused for many years. It sold about six years ago and now has a travel trailer, covered fire pit and shed.
 3. The lot to the east formerly had a small cabin and shed on it. The previous owner stopped coming to the lot and it fell into disrepair. The cabin was removed about 2 years

ago by the current owners. The property has been for sale and it now sits with an old shed, a small cleared area where the cabin used to be and the remainder is trees and bush.

4. Sometime during the late fall of 2020 or winter of 2021, two trees fell onto the applicant's boat storage shed. The trees came from behind the boat shed on what was recently determined as the neighbour's property. Trees growing out and over the boat structure or falling and dangerously getting hung up on other trees was becoming a concern. At the time, both the applicant and appellant presumed that this area was on the applicant's property as no survey had been completed.
5. The applicant discussed with the neighbours to have the area cleared of trees for the length of the boat and storage shed.
6. The neighbours had recently surveyed the land to determine where the property line resides.
7. The applicant noted he also had a land survey completed. Both surveys were completed and the property line was determined.
8. The neighbours constructed a fence along the newly discovered property line.
9. In January, after being out of Country, the applicant was advised of a property line infringement.
10. The applicant advised that the survey he had completed was done in winter – he did not remove any survey stakes referenced by the appellants.
11. The applicant does not feel his development is affecting the neighbouring properties.

[11] In response to questions from the Board, Mr. Mazurak noted that he also conducted his own survey and that there were no discrepancies in the property surveys conducted by the appellant and himself.

Position of Appellant – Mr. Miles Hoffman

[12] Mr. Hoffman provided two photograph submissions in advance and presented additional photographs and a verbal submission at the hearing. Ms. Janet Hoffman is joint owner of the appellant's property and co-presented with Mr. Hoffman. The submissions and presentations addressed the following:

1. The written appeal letter states the following: Site plan property line has been misrepresented. Building is 2 inches from property line and roof overhangs our property. We had surveyed Aug 2022 and took photos luckily. The survey stakes were removed by the neighbor to try and conceal the property line. The county has ordered a letter of

compliance which was appealed and overturned giving an extension till Aug 31st 2023 to comply to Bylaw 1 meter.

2. The appellant provided an overview of the ownership history of their lot, noting it was previously owned by Mrs. Hoffman's aunt. Their family has owned this land for generations.
3. The Hoffmans noted they requested that trees were not to be cut down on their property by the applicant. When they came out last spring to their lot, it was discovered that trees had been taken down and stumps mulched.
4. The fence line was erected to keep the applicant off their property; the fence is not the property line.
5. The boat storage (accessory building) is encroaching on their property. The building may be old but it is encroaching on their property.
6. There were issues with other items belonging to the applicant being stored on their lot; it took two and a half years to get those items removed. Previous concerns were raised with the County's Enforcement Services department.
7. The Hoffmans submitted photos that showed the proximity of the boat storage (accessory building) to their property line. They noted that the accessory building is closer than the variance applied for and the roof overhangs onto their property. The survey stake in the photo is less than two inches from the building. The fence line is not on the property line because the applicant's building is encroaching.
8. The Hoffmans noted that this issue has cost them thousands of dollars to build the fence and to have a survey completed. They questioned how a variance could be granted when the development is on their property.
9. This development impacts them as they would not be able to develop that portion of their lot due to the encroachment and location of the structure.

[13] In response to questions from the Board, Mr. Hoffman confirmed that the property survey was completed by a professional surveyor done with GPS, the original pins were located and the survey is accurate within 2 cm. Mr. Hoffman feels that the applicant should have to provide a Real Property Report to support their development application as one has not been provided. The Hoffmans confirmed that the property was originally owned by Ms. Hoffman's Aunt for approximately 40 years and they purchased it from her and have owned it for approximately three years.

Statement of Issues

[14] The Board will address the following issues:

1. Does the Board have the authority to grant the variance, as applied for in development application 2023-042?
2. Should the development application with variance be approved by the Board?

Conclusion on the Issues including Reasons

[15] The development is a permitted use under the Lac La Biche County Land Use Bylaw section B3.1 – Country Residential District (CR). Further, section C2.2 – Accessory Buildings and Structures sets out the regulations for accessory buildings. Section C2.2(7)(f) states:

In all districts, accessory buildings shall:

(f) be located a minimum of 1.0 m (3.3 ft.) from a side lot line, provided the building does not encroach on an easement;

As the applicant requested a setback of 0.4 m on the east side property line, a variance from the minimum 1.0 m side setback, the development application with a variance was required.

[16] Additionally, section D1.3– When A Development Permit is Not Required of the Land Use Bylaw sets out developments that do not require a development permit provided they conform to the Land Use bylaw. Section D1.3(1)(a)(i) states:

A development permit is not required for the following developments provided that they conform to the provisions of this Bylaw:

a) Accessory Uses

i) construction or installation of an accessory building that is no larger than 10.22 m² (110.0 ft.²) nor 2.438 m (8.0 ft.) tall or gazebos, pergolas, or awnings less than 13.0m² (140.0 ft.²).

However, as a variance was requested to a setback identified in Section C2.2 and as the accessory building development exceeds the size specified in Section D1.3(1)(a)(i), a development application with variance was required.

[17] The Lac La Biche County Land Use Bylaw provides for the issuance of variances in accordance with section D1.6, granting flexibility to the Development Authority to issue variances on a case-by-case basis and depending on the permitted or discretionary uses of the application. Further, section 687(3)(d) of the *Municipal Government Act* grants authority to the Subdivision and Development Appeal Board to make a decision which does not comply with the Land Use Bylaw, if in the Board's opinion:

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

- [18] Therefore, the Board is satisfied that it has the authority to grant a variance for an application that is for a permitted or discretionary use in the Country Residential (CR) zoning.
- [19] Although the Board has the authority to grant a variance, the Board considered impacts to neighbouring properties and determined that it would substantially impact an adjacent landowner. The Board accepts that the variance to the east side setback of the accessory building would affect the neighbour's use and enjoyment of their property. The submissions of the Appellant were considered relating to the east side setback variance requested.
- [20] The Board determined that the variance request does not meet the variance test as cited in s.687(3)(d)(i) of the *Municipal Government Act*. The photos from the appellant show the close proximity of the structure to their lot and also note the roof overhang of the structure appears to cross onto the appellant's side of the property line. The appellants noted that future use of their property is impacted as development is not possible on that portion of their lot as a result of the applicant's development. It was further noted that both the applicant and appellant agreed upon the location of the property line based on the independent surveys both parties had conducted.
- [21] The Board further noted that due to the uncertainty of the location of the structure in relation to the property line – providing an as-built survey would have been of assistance in the decision-making process.
- [22] The Board acknowledges that submissions were made about personal matters related to the parties, however, the board did not consider these matters in rendering its decision. These matters are not relevant planning considerations.
- [23] The Board acknowledges that historical submissions were made about the subject property, including reference to enforcement matters. However, these were not considered by the Board, as the matter before the Board was planning considerations as it related specifically to Development Application 2023-042.

Decision

- [24] The appeal is allowed and the decision of the Development Authority is revoked.
- [25] The Board identified the development requirements for an accessory building, which is the subject of this appeal, are addressed in section B3.1, section C2.2, and section D1.3 of the Land Use Bylaw.

- [26] The Board refuses to grant the development permit with variance for the accessory building and further notes that the applicant would have opportunity to apply for a development permit that complies with the Land Use Bylaw in all respects.

Aug 8/2023
Date

Kevin Paré
Kevin Paré, Presiding Officer
Subdivision and Development Appeal Board

NOTE: A decision of the Subdivision and Development Appeal Board is final and binding on all parties and persons subject only to an appeal upon a question of jurisdiction or law pursuant to the *Municipal Government Act*. An application for leave to appeal must be made to a judge of the Court of Appeal within 30 days after the issue of the order, decision, permit or approval sought to be appealed.