

**STRATHCONA COUNTY  
Subdivision and Development Appeal Board**

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Appeal File Number: 1-2020  
Application Number: 2020-0084-DP  
Appeal Against: Development Authority of Strathcona County  
Appellant: Shignanski Construction (Justin Shigehiro)  
Landowner: Derek and Alexia Friesen  
Affected Persons: Doug Bychyk  
Stu Chase  
Date and Location of Hearing: March 26, 2020  
at Sherwood Park, Alberta  
Date of Decision: April 8, 2020  
SDAB Members: Liam Kelly, Chair  
Aaron Corser  
Gary Peckham  
Grace O'Brien  
Richard Paterson

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**NOTICE OF DECISION**

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- [1] This hearing was facilitated via conference call in light of the COVID-19 pandemic and the need to maintain physical distancing. There was consent by all parties to the facilitation of the hearing taking place by electronic means.
- [2] 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").

- [3] The appeal is from the decision of the Development Authority of Strathcona County ("Development Authority) to refuse to issue a development permit for PROPOSED ADDITION TO EXISTING SINGLE DWELLING, Addition of Front Living Area (2.44m x 3.25m) and Front Attached Garage (4.87m x 7.32m) on the property legally described as Lot 9, Block 89, Plan 762 0777 (Broadmoor Estates) and municipally described as 9 Braeside Terrace (the "Property").
- [4] The appellant is: Shignanski Construction (the "Appellant").
- [5] The landowners for the Development Permit are Derek and Alexia Friesen (the "Landowner").
- [6] 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.
- [7] Appendix "B" attached to this decision includes a list of referenced legislation.
- [8] Appendix "C" attached to this decision includes a list of potential conditions of approval.

#### **PROCEDURAL MATTER - SDAB COMPOSITION AND HEARING PROCESS**

- [9] At the start of the hearing, the Chair disclosed that he was a former acquaintance of an adjacent property owner who submitted a letter of support on behalf of the Appellant.
- [10] None of the parties or any person present at the Hearing affected by this appeal objected to the Chair's participation or to any of the SDAB members hearing this appeal.
- [11] No one objected to the hearing process or to using electronic means for the hearing.
- [12] There were no other jurisdictional or preliminary matters raised at the outset of the Hearing by any party or any person present at the Hearing affected by this appeal.
- [13] Upon confirming it had jurisdiction to hear this Appeal, the SDAB continued with the Hearing.

## **ISSUE**

[14] The Appellant raised the following grounds of appeal:

- a. The proposed development aligns with the spirit and principles of the Mature Neighbourhood Overlay; and
- b. The proposed development should be considered, and a variance permitted as the Property is situated in a unique spot on the edge of a keyhole cul-de-sac.

[15] The issues before the SDAB arising from the above grounds of appeal are as follows:

- a. Should the SDAB overturn the decision of the Development Authority to refuse a development permit for the proposed addition to the existing dwelling on the Property?

## **SUMMARY OF THE DEVELOPMENT AUTHORITY'S POSITION**

[16] On February 25, 2020, the Development Authority refused to issue development permit 2020-0084-DP (the "Development Permit") for the proposed addition to the existing single dwelling including an addition of front living area and front attached garage. The Development Authority acknowledged that the Mature Neighbourhood Overlay (MNO) does not provide the ability for the Development Authority to grant a variance.

[17] The Development Authority submits:

- a. The Property is located in the R1A Single Detached Residential A – zoning district located within the MNO in the Land Use Bylaw (LUB);
- b. The Property is in the Broadmoor Estates neighbourhood and currently supports a single dwelling with an existing attached garage and uncovered deck, and one accessory building (pumphouse building);
- c. The proposed addition would add onto the existing attached garage and create additional living space within the single dwelling;
- d. Following the MNO Development permit process, the Appellant submitted a Development Permit Application with the required plans on February 14, 2020;

- e. Section 12.1.11 (a) requires a site inspection be conducted by the Development Officer when reviewing the development permit application; a site inspection was conducted on February 20, 2020 in accordance with this regulation;
- f. Section 12.1.5(b)(i) of the LUB states: "The minimum and maximum setback from the front lot line shall be within 0.5 m of the average setback from the front line of the dwelling on each abutting lot."
- g. Upon review of the Real Property Report's on file for the abutting lots, it was determined the average front setback of the abutting lots is 8.395 m and the proposed addition on the Property would therefore require a minimum front setback of 7.895m. (The minimum front setback is 0.50 m less than the average front setback of the abutting lots.);
- h. The proposed addition to the existing single dwelling would be setback 2.90 metres from the front property line, resulting in a deficiency of 5.00 metres or 63.29%;
- i. Section 12.1.13(d) of the MNO LUB states: "The Development Officer shall not approve a variance for a development permit for a permitted use or discretionary use, which does not comply with the regulations of this overlay";
- j. The proposed development would require variances to the MNO regulations specifically a variance to the front yard setback regulations and the Development Officer does not have any discretion to allow a variance in the MNO;
- k. For this reason, the refusal decision was rendered on February 25, 2020 and the applicant was advised of the decision.
- l. Section 12.1.10(a) states an advisement notice be sent to adjacent landowners advising that the development permit application decision. Letters were sent to adjacent landowners February 25, 2020;
- m. While unable to approve the application because of the current LUB regulations, it is the Development Authority's position that the proposed addition, for this specific lot, would not be detrimental to the existing character of the neighborhood.

NOTE: The Development Authority did provide potential conditions of approval for the Board's consideration. These potential conditions are included in Appendix C.

## **SUMMARY OF THE APPELLANT AND LANDOWNER'S POSITION**

[18] The Appellant and Landowner co-presented and submitted:

- a. The neighbourhood has all the amenities the Landowner enjoys and desires to live near;
- b. The Landowner aims to increase the interior space of the dwelling on the Property while maintaining the design characteristics, look, and feel of the neighbourhood;
- c. Extension of the front garage is the only option for increasing interior living space since expansion in the back of house is not possible because of an existing walk-out basement;
- d. Materials will be re-used from areas in the home to further keep with the architectural character of the existing dwelling, and maintaining consistency of exterior finishes on the proposed addition;
- e. Prior to submitting the development application, consultation took place with both immediate adjacent neighbours and they are both in support of the proposed addition;
- f. Seven (7) letters of support have been obtained from neighbouring landowners as well as two (2) emails from neighbouring landowners who intended to speak in support of the proposed development at the hearing;
- g. Landscaping of shrubbery will be extended to soften the removal of trees from the Property which will maintain screening between immediate neighbours; and
- h. Due to the location of the Property being at the edge of a keyhole cul-de-sac, the setbacks start to move closer to the garage in the middle of the driveway, resulting in the east-most corner of the garage having less setback than the west-most portion of the garage, requiring a variance from the Development Authority.

## **SUMMARY OF THE AFFECTED PERSONS' POSITION**

[19] S. Chase owns the property at 10 Braeside Terrace, the direct next door neighbour to the east of the Property; D. Bychuk owns the property at 8 Braeside Terrace, the direct next door neighbour to the west of the Property.

[20] It is the position of S. Chase and D. Bychyk that the appeal and the variance should be granted.

[21] The Affected Persons submit:

- a. The Landowner has reviewed architectural plans with neighbours, as well as the planned construction schedules, considering and mitigating the impacts renovations may have on the neighbourhood, such as traffic and noise;
- b. The Landowner takes great pride in ownership and has improved the Property's appearance since becoming the owner;
- c. Many homes in the neighbourhood have undergone renovations; and
- d. There are no objections to the proposed development.

## **FINDINGS**

[22] The SDAB finds:

- a. The Property is located in the R1A Single Detached Residential A – zoning district located within the MNO of the LUB;
- b. The Property is in the Broadmoor Estates neighbourhood and currently supports a single dwelling with an existing attached garage and uncovered deck, and one accessory building (pumphouse building);
- c. This appeal was the result of a Development Permit Application submitted for a proposed addition to the single dwelling – addition to existing attached garage, addition of new living area;
- d. The proposed addition would add 4.87m onto the existing attached garage and create additional living space within the single dwelling;
- e. The process to obtain a development permit within the MNO was followed;
- f. The proposed addition does not conform with the regulations in the MNO of the LUB;

- g. The dwellings of the abutting lots have an average front setback of 8.395 m and the proposed addition on the Property would therefore require a minimum front setback of 7.895m. (The minimum front setback is 0.50 m less than the average front setback of the abutting lots.);
- h. The proposed addition to the existing single dwelling would be setback 2.90 metres from the front property line, resulting in a deficiency of 5.00 metres or 63.29%;
- i. The proposed development would require variances to the MNO regulations; specifically, a variance to the front yard setback regulations and the Development Officer does not have any discretion to allow a variance in the MNO;
- j. While unable to approve the application because of the current LUB regulations, it is the Development Authority's position that the proposed addition, for this specific lot, would not be detrimental to the existing character of the neighborhood.

**DECISION**

[23] The appeal is allowed, and a development permit is issued for the proposed addition to an existing dwelling, with the conditions set out in Appendix "C" attached to this decision.

**REASONS FOR THE DECISION**

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

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

*may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*

*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,*

*(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.*

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

- [25] The Appellant submits that the neighbours do not oppose the proposed development;
- a. The Board was persuaded by the Appellant that the proposed development is supported by the neighbours, as letters of support were received from seven (7) neighbours and no objections were received.
- [26] The Landowner submits that they aim to utilize the current footprint of the Property to gain the needed interior living space, and also plan to re-use materials to keep with the current character and the design characteristics, ensuring the look, and feel of the home remain consistent with the neighbourhood;
- a. The Board was persuaded by the Landowner that the proposed development would be in keeping with the streetscape and the architectural and design elements of the MNO.
- [27] The Appellant submits that the location of the Property creates the need for a variance for the proposed development due to the regulations in the MNO which impede the use and enjoyment of the Landowner's property;
- a. The Board was compelled by the Appellant's argument and agrees the Property's location at the edge of a keyhole cul-de-sac makes it difficult to comply with the setback requirements in the MNO.
- [28] Following discussion between the Appellant, Landowner, and Development Authority all parties agreed that the dimension from the closest face of the proposed addition to the back face of curb would be approximately 9.1m;
- a. The Board was persuaded that with the proposed addition, a large vehicle such as an extended body pick-up truck could safely park on either side of the resulting driveway without encroaching onto the sidewalk.

[29] As stated in paragraph 16(o) the Appellant's addition does not comply with the MNO and the Development Authority cannot approve a variance for a development permit which does not comply with the regulations of the overlay;

- a. The Board was convinced that the Appellant's addition does not unduly interfere with the amenities of the neighbourhood and does not interfere with or affect the use, enjoyment or value of the neighbouring parcels of land;
- b. The Board was convinced that the proposed development was supported by the neighbouring property owners; and
- c. The Board was convinced that but for the Development Authority inability to grant a variance this permit would have been granted.

DATED at Strathcona County, in the Province of Alberta, this 8<sup>th</sup> day of April 2020.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD



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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**

<b>Printed Materials:</b>	<b>Consisting of:</b>
Application file	12 pages
Decision of Development Officer	6 pages
Notice of Appeal	11 pages
Notice of Hearing	6 pages
Submission received from the Development Officer prior to hearing (MNO PowerPoint Presentation)	15 pages
Submission received from the Development Officer prior to hearing (PowerPoint Presentation on Appeal 1-2020)	29 pages
Submission received from the Development Officer prior to hearing (Presentation speaking notes Appeal 1-2020)	5 pages
Submission received from Appellant	2 pages
Submission received from Affected Person (D. Bychyk)	1 page
Submission received from Affected Person (S. Chase)	1 page

<b>Persons who made oral presentations:</b>	
<b>Name:</b>	<b>Capacity:</b>
Chris Gow	Coordinator, Development Permitting, Planning & Development Services, Strathcona County
Janna Widmer	Coordinator, Long-Range Planning, Planning & Development Services, Strathcona County
Meghan Thompson	Industrial Planning Officer, Planning and Development Services, Strathcona County
Justin Shigehiro	Appellant
Derek Friesen	Landowner
Doug Bychyk	Affected Person (written submission)
Stu Chase	Affected Person (written submission)

**APPENDIX "B"**  
**Legislation Cited**

**Land Use Bylaw 6-2015**

**PART 12: Mature Neighbourhood Overlay (MNO)**

<b>Section</b>	<b>12.1.3</b>	<b>Definitions</b>
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For the purposes of interpretation of Section 12.1 MNO – Mature Neighbourhood Overlay, the following words, terms, and phrases have the meaning assigned to them as follows:

**ABUT or ABUTTING** means:

- immediately contiguous to, or physically touching, and when used with respect to lots or sites, means to share a common side lot line;
- despite Section 3.8, in the case of a corner lot, the Development Officer may determine the abutting lot or lots based on the orientation of the development in relation to the corner lot.

**ARCHITECTURAL CHARACTER** means the overall architectural style of development, as well as identifiable characters associated with development including, but not limited to, massing, siting, building typology, and landscaping.

**ARCHITECTURAL DESIGN ELEMENTS** mean external features of a building that form the architectural style. These features include, but are not limited to, elements such as form, method of construction, building materials and building features.

**STREETSCAPE** means neighbouring lots that are visible from the road, facing the front of a lot on which a development is proposed.

<b>Section</b>	<b>12.1.5</b>	<b>Development Regulations - Principal Dwelling</b>
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(b)(i)

Front setback:

The minimum and maximum setback from the front lot line shall be within 0.5 m of the average setback from the front line of the dwelling on each abutting lot.

<b>12.1.10</b>	<b>Other Regulations – Public Advisement Process</b>
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(a)

Despite Section 2.12, the Development Authority shall provide advisement of the decision including the legal description, civic address, and nature of the development by sending a letter by regular mail to landowners of adjacent lots as identified on the County’s Assessment Roll. This advisement shall not be considered a notice of decision.

	<b>12.1.11</b>	<b>Other Regulations – Review Process</b>
	(a)	When reviewing an application for development within the Mature Neighbourhoods, the Development Officer shall conduct at least one site inspection during the application review.
	<b>12.1.13</b>	<b>Other Regulations</b>
	(d)	The Development Officer shall not approve a variance for a development permit for a permitted use or discretionary use, which does not comply with the regulations of this overlay

**APPENDIX "C"**  
**POTENTIAL CONDITIONS OF APPROVAL**

Development Appeal No.: #1-2020

Appellant: Shignanski Construction Inc.  
Proposed Development: PROPOSED ADDITION TO EXISTING SINGLE DWELLING  
Addition to Existing Single Dwelling - Addition of Front Living Area (2.44m x 3.25m) and Front Attached Garage (4.87m x 7.32m)  
Legal Description: Lot 9, Block 89, Plan 762 0777  
9 Braeside Terrace (Broadmoor Estates)

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. That the proposed addition shall be developed and located in conformance with the plans submitted with this application.
2. That the exterior finish and architectural design of the proposed addition shall maintain the overall character of the area. In this regard, the proposed structure shall incorporate at least two architectural design elements from the primary architectural style found in the streetscape.
3. That the proposed addition shall not be developed or used as an additional dwelling unit or for commercial purposes. In this regard any change of use or intensification of the subject structure (ie. addition, alteration, home business, etc.) would require a new development permit application.
4. That no portion of the proposed addition may extend or overhang into an easement.
5. Failing to conform to the aforementioned conditions would render this permit invalid.

Furthermore, the applicant is advised:

1. That building, plumbing, gas or electrical permits may be required prior to any and all construction, alteration, or change in use or occupancy of a building on-site. Please contact Planning and Development Services for further information at 464-8080.
2. That approval of this application does not excuse the applicant from ascertaining and complying with the requirements of other municipal bylaws, easements, environmental reserve easements, covenants, conservation agreements, development agreements, or Provincial or Federal statutes or regulations.