

## Leduc County Regional Subdivision and Development Appeal Board (LCRSDAB)

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Suite 101, 1101 - 5 Street

Nisku, AB T9E 2X3

Phone : 780 770-9259

Email : [joyceg@leduc-county.com](mailto:joyceg@leduc-county.com)

**Appeal File No.** LCRSDAB\_01-2023

**Between:** Beata Marzec (*the Appellant*)  
and  
Leduc County, Development Authority

**Hearing date:** May 11, 2023

**Landowner's name:** Beata Marzec

**Leduc County Roll No.** 1936033

**Legal description:** Lot 7, Block 2, Plan 1324403, Pt. NE 4-48-27-W4

**Municipal address:** 30 27331 Township Road 481, Whitetail Country Estates

**Development Permit Application No.** D23-044

**Nature of development:** Accessory building; detached garage 144.93 m<sup>2</sup> (1,560 ft.<sup>2</sup>) on vacant lot

**Board members:** Mary-Ann McDonald, Chair  
Gerd Andres, Board Member  
Kevin Maine, Board Member  
Pat Rudiger, Board Member  
Rick Thomas, Board Member

**Clerk:** Joyce Gavan, Legislative Coordinator

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### DECISION

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**Description of appeal:**

- (1) This is an appeal on Development Permit Application D23-044 by Beata Marzec, applicant and landowner on the lands located within Leduc County at Lot 7, Block 2, Plan 1324403, Pt. NE 4-48-27-W4.
- (2) On March 13, 2023 the Development Permit Application D23-044 was submitted to the Leduc County Development Authority for an accessory building (detached garage) 144.93 m<sup>2</sup>; 1,560 sq.<sup>2</sup> in size to be located on a vacant lot. The size of the property is 5.68 acres and covered with a thick forest.

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- (3) On March 31, 2023 the Development Authority refused the application for an accessory building; detached garage (144.93 m<sup>2</sup>; 1,560 ft.<sup>2</sup>) on the vacant lot within Whitetail Country Estates.
- (4) The subject property is situated south of Township Road 481, and west of Range Road 273.
- (5) The residential subdivision is approximately 500 metres from the northern shore of Wizard Lake.
- (6) The subject property is within the Wizard Lake Central (WLC) District in accordance with the Leduc County Land Use Bylaw No. 7-08.
- (7) Accessory buildings greater than 65.0 m<sup>2</sup> (700 ft.<sup>2</sup>) are considered a discretionary use in accordance with the Land Use Bylaw (LUB).

### Preliminary matters:

- (8) The Chair called the hearing to order at 9:02 a.m. on May 11, 2023 with the following in attendance:

Board members: Mary-Ann McDonald, Chair  
Gerd Andres, Board member  
Kevin Maine, Board member  
Pat Rudiger, Board member  
Rick Thomas, Board member

Administrative staff: Joyce Gavan, Clerk  
Miranda Anderson, Recording Secretary

Development Authority: Charlene Haverland, Manager - Development Services  
Ata Muhammad, Planner - Development Services

Appellant: Beata Marzec, Appellant, applicant and landowner  
Kasia McKinlay, daughter of appellant

- (9) The Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- (10) The Chair called upon the Clerk to introduce the appeal.
- (11) Clerk Joyce Gavan introduced the appeal as follows:
  1. On April 17, 2023 an appeal was received by Beata Marzec appealing the March 31, 2023 decision of refusal by the Leduc County Development Authority for the proposed development of an accessory building; detached garage 144.93 m<sup>2</sup> (1,560 ft.<sup>2</sup>) on a vacant lot located on Lot 7, Block 2, Plan 1324403, NE 4-48-27-W4 within Whitetail Country Estates (Municipal Address 30 27331 Township Road 481), Leduc County.
  2. The appeal is properly before the Board in accordance with S. 686 of the *Municipal Government Act* in that it was received on time, the LCRSDAB is the proper body to hear the

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appeal and notification was provided to the appellant, development authority, adjacent landowners and affected parties.

3. There have been no requests for postponement.
  4. There is a sign-in sheet for anyone attending to provide their name, email and mailing address.
  5. The hearing is being recorded for record keeping purposes only.
- (12) The Chair provided introductory remarks and outlined how the hearing would be conducted, including the order and appearance of parties.

### Preliminary issues:

- (13) The Chair asked if there were any preliminary issues that need to be addressed, and there were none.

### Appearances:

- (14) Beata Marzec, appellant/applicant and landowner
- (15) Kasia McKinlay, daughter to appellant (Beata Marzec)
- (16) Ata Muhammad, Planner - Development Services
- (17) Charlene Haverland, Manager - Development Services

### Summary of evidence:

#### *i) Summary of Development Authority's position*

- (18) The Development Authority recommends that the LCRSDAB uphold the decision of the Development Authority and refuse Development Permit D23-044 because it does not meet the regulations of the Leduc County Land Use Bylaw 7-08.
- (19) In accordance with the Land Use Bylaw, the definition of *Accessory Building is to be incidental and subordinate to a Principal Use or a Principal Building*. The subject parcel is vacant. Accessory buildings are intended to support the principal residential use on the lands. The purpose of this definitional requirement is to restrict alternative uses such as storage premises and business operations on vacant lands. The proposed development would not conform to the intent of the *accessory building* definition and regulations.
- (20) The definition of *Use, Principal* means the primary purpose for which a building or site is used. There shall be no more than one principal use on a lot unless specifically permitted in the Land Use Bylaw.
- (21) Allowing accessory buildings on multi-lot residential subdivision prior to development of dwellings is not aligned with the definition and use of accessory buildings. Such buildings will stand on its own

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and not subordinate and incidental to a principal residential use, and are not aligned with the general purpose of the district.

- (22) There were no referral comments received from adjacent landowners.
- (23) Internal comments were received from Leduc County Engineering and Utilities approving the existing access and standard drainage condition. Leduc County Safety Codes permits will be required.
- (24) The subject parcel is identified within the Lakeshore communities in accordance with the Municipal Development Plan. The County supports recreation and residential development around the lakes provided the development can be supported in an ecologically sensitive way. T
- (25) The subject parcel is identified within the Central Conservation Area of the Wizard Lake Area Structure Plan. The Area Structure Plan for Wizard Lake guides subdivision and development.
- (26) The Leduc County Land Use Bylaw regulations restrict the Development Authority to grant a permit or make variances. If there was an existing house on the subject property, the Development Authority could consider approval.
- (27) Leduc County Council approved the Leduc County Land Use Bylaw No. 7-08 in 2008. The intent of this restriction is to prevent people living in an accessory building without a residence. There is a review of the current LUB underway which Council will have the opportunity to review the definitions relating to personal storage buildings.
- (28) The subject parcel does not have direct access to Wizard Lake.
- (29) Each application is taken on its own merit and there have been applications within the Wizard Lake area that have come before the appeal board over the years requesting a variance. Farm buildings on agricultural lands do not require a development permit.
- (30) The Land Use Bylaw and policies sets the rules while the Area Structure Plan sets the vision. The Wizard Lake Central (WLC) District lists Permitted and Discretionary uses and the definitions tie the decision by the Development Authority back to requiring a permanent residence. If there was a residential building on the subject parcel, then it would be considered a Permitted Use and no referral is required subject to the proposed development is under 700 sq<sup>2</sup>.
- (31) Whitetail Country Estates is a relatively new development; since 2011 there was subdivision of 5 lots and then later an additional 5 lots were created adjacent to Range Road 273.

### ***ii) Summary of Appellant's position***

- (32) While the position of the Development Authority's refusal is understood because of the restrictions within the Land Use Bylaw, the intent is to build a residence on the lot within 2 years.

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- (33) The priority is to have a garage which would eliminate hauling stuff back and forth and the ability to store quads, RV and boats securely contained to avoid potential theft, vandalism and/or damage from exposure to environmental conditions such as hail, rain and sun.
- (34) The subject property is used for recreational use only. The family comes out to camp overnight in their RV's which are self-contained. The boat is launched through the day use area.
- (35) The lot immediately adjacent is vacant and used occasionally for recreational use as well.
- (36) There is no intention or desire to use the garage as a storage facility, commercial use or a side business. The use is strictly for personal and recreational use by the family.
- (37) The appellant is 58, widowed, mother of 2, and grandmother to 3 grandchildren. The lot was purchased with the intent for the family to gather and enjoy this property.
- (38) The rationale for building a detached garage before a principal building is to allow the use now as much as possible while planning and budgeting finances to build a cabin in the next two years. Everyone in the family is employed however we do not have the funds right now to construct a primary building. The appellant wants to construct the garage first for storage of personal property; and the carpenter in the family will build the garage, subject to approval.
- (39) There is no power from the property line and believe the requirement is that a building must be on site first. There are no other services (septic, sewage or water) on site.
- (40) The neighbours have no complaints or negative difference of opinion.

### **iii) Fairness of the hearing**

- (41) The Chair asked the appellant if she felt she received a fair hearing and Beata Marzec responded affirmative.

### **iv) Closing of the hearing**

- (42) The Chair closed the hearing at 9:35 a.m.
- (43) The Board moved into closed session for its deliberations, in accordance with Section 197(2.1) of the *Municipal Government Act*.

### **Findings of fact:**

- (44) The subject property is located within Whitetail Country Estates residential subdivision, situated south of Township Road 481 and west of Range Road 273. The residential subdivision is ±500 metres from the northern shore of Wizard Lake. The size of the property is 5.68 acres and covered with a thick forest. There is an existing approved access.
- (45) The lot is vacant and there is no power, water or sewage servicing the lot.

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- (46) The appellant indicated the proposed use of the garage is strictly to store their personal goods for security purposes and the use is for recreational use only for the family.
- (47) The intent is that a permanent residence would be constructed in the near future.
- (48) The building plans submitted appear to be reasonable and acceptable for the proposed use.
- (49) There were no concerns submitted and the subject property is treed which does not obstruct the view of neighbouring properties.
- (50) The Leduc County Land Use Bylaw regulations restrict the Development Authority to grant a permit or make variances with respect to this type of development.
- (51) In accordance with S. 687(3)(d) of the *Municipal Government Act*, in determining an appeal the board has authority to make an order or decision even though the proposed development does not comply with the land use bylaw provided 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 would conform with the use prescribed for that land as set out in the land use bylaw.

### Reasons for decision:

- (52) The proposed development conforms with the intent of Municipal Development Plan and Wizard Lake Area Structure Plan policies in the Wizard Lake area being that it is a low-density development and can be supported in an ecologically sensitive way.
- (53) The proposed construction of an accessory building; detached garage of 1,560 ft.<sup>2</sup> conforms with the use prescribed for the land within the Wizard Lake Central (WLC) district of the Land Use Bylaw and will not unduly interfere with the amenities of the area or materially affect the use, enjoyment or value of nearby properties.
- (54) the Board has the authority under the Municipal Government Act, Section 687(3)(d) to make a decision even though the proposed development does not comply with the Leduc County Land Use Bylaw.

### Decision:

- (55) For the reasons set out above, the appeal is allowed and the decision of the Development Authority is overturned. A development permit is issued, subject to the following conditions:
  - 1. Approval is granted based on the information provided by the appellant for the approved development only and no other development.
  - 2. The approved development shall be located as shown on the attached approved site plan.
  - 3. The approved accessory building shall be free of rust and painted a single neutral colour or clad in siding compatible with the future dwelling.

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4. The approved accessory building shall not be used as a dwelling unless specifically approved as a dwelling by a separate development permit.
5. The approved accessory building shall be used as a personal residential accessory building for the storage and maintenance of property belonging to the residents of the parcel and not for business purposes. At no time in the future, unless specifically permitted by the County, shall the accessory building be used for industrial or commercial purposes.
6. The site shall be maintained in a neat and orderly manner including the containment of all construction materials and refuse, to the satisfaction of the Development Authority.
7. The applicant/landowner shall provide fire-fighting access at all times to the satisfaction of Leduc County Fire Services.
8. The approach must be maintained to avoid any damage to the County owned road surface due to construction activity. A post development inspection will be conducted and the applicant/land owner must rectify any damage to the approach or County roadway.
9. The movement of construction material onto the property may require the applicant to enter into a Road Use Agreement with the County. The applicant must contact Public Works and Engineering prior to the movement of construction material to discuss this requirement.
10. The development shall not cause any adverse drainage impact on adjacent properties or flooding of nearby ditches in excess of their capabilities.
11. All new accesses, approaches or upgrades, including driveways required off of a Leduc County public roadway, as a result of the development shall first require an Access Application to be provided to the satisfaction of, and approved by Leduc County Public Works and Engineering.
12. The applicant shall contact Leduc County Engineering & Utilities Dept. at 780-979-6185 to obtain a road use agreement before bringing any additional soil to site.
13. No further development, expansion or change in use is permitted unless approved by Leduc County.

Failure to comply with any of the preceding conditions will render this permit null and void.

Development Permit D23-044 shall expire after one year from the date of decision unless development has commenced.

### **Important information for the applicant/appellant**

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. An application for leave to the appeal must be made to the Court of Appeal within 30 days after the issuance of this decision and notice of the application must be given to the Leduc County Regional Subdivision and Development Appeal Board and any other persons that the court directs.

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2. This Development Permit is issued under the Leduc County Land Use Bylaw 7-08. It does not exempt you from compliance with any other municipal Bylaw or statutory plan applicable to the approved development, any relevant federal and provincial statute or regulation, or any easement, covenant, agreement or contract affecting the subject lands.
3. The County administers the Safety Codes Act, and you must obtain any Safety Codes (building, electrical, gas or plumbing) permit(s) required prior to commencing construction. Increased setback distances from property lines, and/or modifications to plans for proposed buildings may be required to achieve compliance under the Alberta Safety Codes Act.
4. Contact Leduc Utilities & Engineering and Road Operations at 780-979-6185 regarding approach approvals and Road Use Agreements as required.
5. Contact Leduc County Fire Services at 780-955-7099 regarding compliance with the Alberta Fire Code.
6. Please be advised that this development may initiate inspections from the Assessment Department. If you would like to schedule an appointment or have questions, please contact the Assessment Department at 780-955-6412.



Chair, LCRSDAB

Issued on this 19 day of May, 2023.



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### APPENDIX A

Documents received prior to the hearing

NO.	ITEM
1.	Notice of Hearing - April 19, 2023
2.	Notice of development appeal received April 17, 2023 by Beata Marzel providing reasons for appeal
2.A.	Permit application dated Feb. 27, 2023
4.	Development Authority report
4.A.	Development Authority refusal with site plan - March 31, 2023
4.B.	Key Plan - Lot 7, Block 2, Plan 1324403, NE 4-48-27-W4 - Whitetail Estates
4.C.	Building plans
4.D.	Leduc County adjacent landowner referral map
4.E.	Land Use Bylaw 7-08 - District Regulations - Wizard Lake Central (WLC) District
4.F.	PowerPoint presentation - Development Authority

### APPENDIX B - LEGISLATION

#### **Leduc County Land Use Bylaw No. 7-08**

The subject land is located within the WLC – Wizard Lake Central District in accordance with the Leduc County Land Use Bylaw 7-08.

In accordance with Part 9.27.1 of the Land Use Bylaw 7-08, the purpose of this district is to protect the integrity of the lake and watershed, preserve tree cover and minimize adverse environmental impacts while allowing for minimal development of recreational and agricultural uses as well as residential development on smaller lots at lower densities.

Part 9.27.3 states that Accessory Building size that is greater than 65.0m<sup>2</sup> (700 ft<sup>2</sup>) is a Discretionary Use.

Part 3.4.2 states that notification of all discretionary use development permit applications shall be sent to adjacent landowners as identified on the assessment roll of the County and to anyone who in the opinion of the Development Authority may be affected by the proposal.

Part 3.5.1 states that the Development Authority may approve a discretionary use if in its opinion, the proposed development complies with the general purpose of the land use district.

Part 3.5.2 states that when processing an application for the development of a discretionary use, the Development Authority shall consider compatibility of the proposed development with surrounding lands in terms of function, form and scale.

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Part 3.8.3 states that the issuance of a notice of decision on a development permit application or a discretionary use shall be sent to adjacent landowners as identified on the Leduc County Assessment Roll and may be published in a local newspaper.

### Part Eleven - Definitions

*ACCESSORY BUILDING* means, for the purpose of administering the provisions of Part Nine – District and is more than 10.0m<sup>2</sup> (107.6 ft<sup>2</sup>) in area or 2.0m (6.5 ft.) in height.

*ACCESSORY DEVELOPMENT* means a use or building that is incidental and subordinate to a principal use or principal building located on the same lot.

*USE, PRINCIPAL* means the primary purpose for which a building or site is used. There shall be no more than one principal use on a lot unless specifically permitted in this Bylaw.

### **Municipal Development Plan (MDP)**

According to the MDP, the subject parcel is identified within Lakeshore communities.

Policy 4.5.3 states that the County has a diversity of Lakeshore Communities centred on Pigeon Lake and Wizard Lake. The County supports recreation and residential development around the lakes provided the development can be supported in an ecologically sensitive way.

Policy 4.5.3.1 states that the approved Area Structure Plans for Pigeon Lake and Wizard Lake will guide subdivision and development in those areas.

### **Wizard Lake Area Structure Plan (ASP)**

The subject parcel is identified within Central Conservation Area of the Wizard Lake ASP.

Policy 10.3A states that acceptable new low-density development in this area will be sensitive to natural systems and corridors and will accommodate the ongoing functions of farming within the area.

### **Municipal Government Act (MGA)**

Section 687(3)(d) Municipal Government Act, in determining an appeal, the subdivision and development appeal board:

- (d) may make an order of 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,
  - and
  - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

Approved by: Leduc County Regional  
 Subdivision and Development Appeal  
 Board (LCRSDAB)  
 Date: May 19, 2023  
 File No. LCRSDAB\_01-2023  
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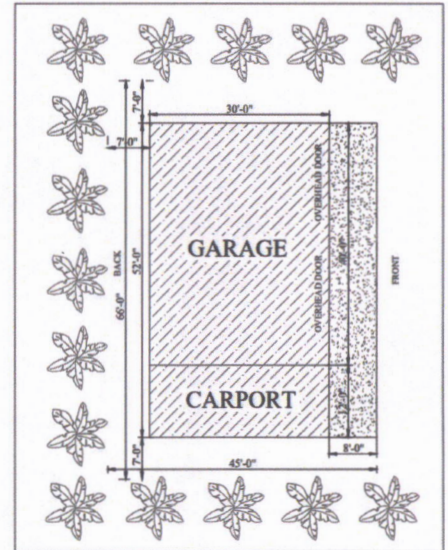
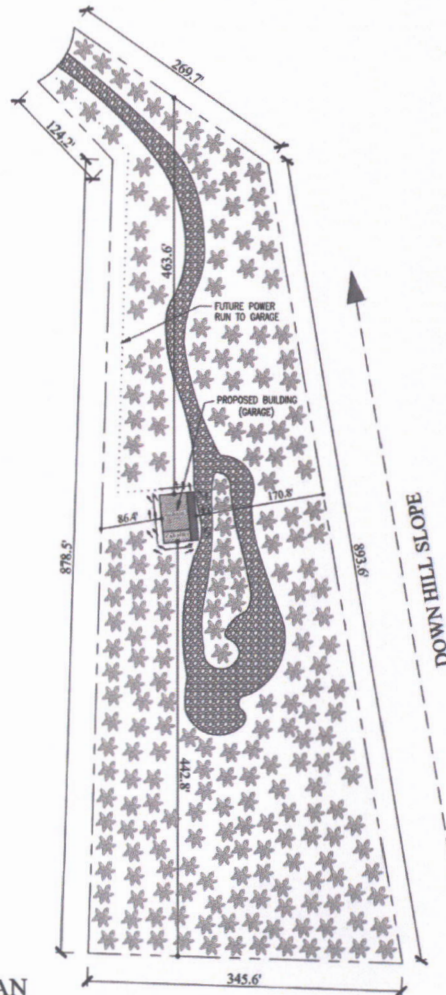
LOT 7, 27331  
 TOWNSHIP ROAD 481  
 PLAN 1324403  
 BLOCK 2 LOT 7

**LEGEND**

- PROPERTY LINE
- FUTURE POWER RUN TO GARAGE
- TREES
- LOT CLEARING 0.86 ACRE (GRAVEL)
- DRAINAGE
- DOWN HILL SLOPE
- CONCRETE APPROACH

AREA	
PROPOSED BUILDING	1560 SQ. FT
LOT CLEARING	0.86 ACRES
TOTAL	5.68 ACRES

**SITE PLAN**  
 SCALE: 1/64"=1'



**PROPOSED BUILDING CLOSE UP**  
 SCALE: 1/8"=1'

