

Recommendation:

That the [Report Number] Memo, dated April 6, 2021 regarding Greenwood Proposal – 1325 Trapper’s Lane be received.

Background:

The subject lands located at 1325 Trapper’s Lane, having Roll No. 1522-020-005-36300, is owned by Tara Greenwood and Dwayne O’Leary. The property owners would like to demolish the existing seasonal dwelling and detached garage and rebuild with an expanded dwelling in the same location as the existing dwelling. The existing dwelling is located approximately 10 metres (35 feet) from the high water mark and 4.5 metres (15 feet) from the nearest side yard (see Appendices for survey and aerial imagery). A pre-consultation meeting was held on October 21st, 2020, followed by additional teleconference calls and email correspondence to discuss the proposal.

The subject lands are zoned Special District 133 (S.D.133) in the Township of Douro Dummer Comprehensive Zoning Bylaw 10-1996, as amended. S.D. 133 allows all permitted uses in the Limited Service Residential (LSR) Zone and applies all provisions of the LSR Zone with the exception of reducing the minimum lot frontage requirements to 32.9 metres (108 feet). It states that “all minimum setbacks for all buildings, existing at the time of passing of this by-law shall be ‘as shown’ on the Plan of Survey on file with the Township office as prepared by Beninger Surveying Ltd. and dated August 6, 2003. S.D. 133 goes on to say that the provisions and regulations of the Limited Service Residential (LSR) Zone shall apply to any new construction on the subject property.

The property was the subject of Consent File No. B-137-02, which severed a portion of the subject lands for lot addition purposes to the neighbouring benefitting lands owned by Grant Greenwood. Mr. Greenwood applied for the consent application with the intention of making the frontage of the two lots more equal and increase the side yard setbacks between the existing cottages. The Township supported the consent application provided conditions of rezoning to recognize the deficient frontages and merger agreement were implemented. The County of Peterborough approved the Consent Application on June 27, 2003.

Through the severance process and adjustment of the side lot lines, the lot no longer existed in the same form (i.e. shape) and lost its non-complying status so a zoning by-law amendment was required to bring the lot into compliance. The rezoning was approved by Township of Douro-Dummer on October 6, 2003 by Bylaw No. 2003-65. The amendment changed the zoning from Limited Service Residential (LSR) to a Special District (then 139) to recognize the deficient lot frontage of 32.9 metres (108 feet) and bring into compliance all existing structures on the property.

Discussion:

Mr. Greenwood has requested that Section 3.28 be applied to these properties so that they may expand the dwelling within the same provisions as their neighbours in the Limited Service Residential (LSR) Zone. Section 3.28 of the Zoning Bylaw recognizes existing 'non-complying' buildings or structures and allows for their enlargement, reconstruction, repair, alteration and renovation provided no further reduction of minimum setbacks, less than 25% lateral expansion, and that the walls and supporting floor structure are kept in their entirety and incorporated into the new proposed structure, among other provisions.

By virtue of the lot line adjustment (i.e. consent approval) and zoning amendments approved in 2003 to recognize the existing structures and bring them into compliance, the property effectively loses its 'legal non-complying' status. The parcel no longer exists in the same form (i.e. shape) on the date of passing of the Township Zoning Bylaw and the Special District brought the formerly legal non-complying structures into compliance. Therefore, Section 3.28 of the Township By-law for "Non-Complying Building or Structures" does not apply to a property that is considered 'in compliance' with the by-law.

If the Township were to attempt to apply S. 3.28 provisions, any enlargement, reconstruction or renovation must not further reduce existing setbacks and within the water yard no larger than 25% lateral expansion. Since the 'existing setbacks' for the property are considered the 'minimum setbacks' in S.D. 133, then any enlargement would 'further reduce' those setbacks, and they could not meet the requirements of Section 3.28 a). In addition, the property owners are proposing a complete demolition and rebuild and cannot maintain existing walls and supporting floor structure so it would not meet the requirements of S.3.28.1 f). The Township would require a report from a qualified professional to demonstrate the building is no longer sound, then the applicants would need to apply for a rezoning to a Special District to recognize the new structure and limit future expansions.

The Zoning By-law is 'applicable law' under the Building Code and a building permit cannot be issued for construction contrary to the provisions of the Zoning Bylaw. In this case, S.D. 133 applies to the subject lands, not S.3.28 so the Chief Building Official could not approve a building permit contrary to applicable law by applying S.3.28. The Special District 133 Zone is worded in a way to acknowledge the existing setbacks on the approved site plan as the minimum setbacks for the property and requires all future construction to meet the provisions of the LSR Zone. Therefore, the expansion of the existing dwelling is not permitted under the S.D. zoning and any new construction would be required to meet the 30-metre water yard setback as well as other yard setbacks of the LSR Zone. It is very typical of site-specific zones to have a clause that restricts future development so that any future construction or redevelopment of the property does not make the deficient situation any worse. In this case it was deficient lot frontage, which would be a legitimate reason to limit future expansion of a structure located within the water yard setback.

Township and County staff worked with the applicant to discuss options for redevelopment of the property. Given the policy framework, the applicants can expand the existing dwelling to a second story dwelling, rebuild on the exact same footprint or reconstruct a new dwelling at the 30-metre water yard setback without any planning applications under the existing S.D. 133 provisions. If the applicants wanted to move ahead with their proposal to expand the existing dwelling in situ, a zoning amendment would be required to amend the S.D. zoning. It was the opinion of staff that so long as the applicant's proposal met the intent of the expansion provisions in Section 3.28, including less than 25% lateral expansion and no further reduction of the water yard setback, then a zoning amendment with a new site plan could be supported by staff. It was found that this approach met the intent of the County Official Plan since the proposal was not creating a further reduction of the water yard setback, as shown in aerial photos below.

Council has the ability to make site-specific exceptions through minor variances and zoning amendments so long as they comply with the policies of the Official Plan. Therefore, Council can approve site-specific zone provisions that would reflect a similar scope of work to the expansions within the water yard setback permitted within S. 3.28 for existing 'non-complying' structures but it must be through a zoning amendment decision. Although, this exception may create public expectation for property owners in a similar situation, these site-specific zoning decisions are not legally 'precedent setting'. Any proposal should always be evaluated on its own merits. It is important to note that Council does not have the authority to just 'approve' work contrary to the Building Code and applicable law by asking staff to ignore the S.D. provisions.

Conclusion:

Township staff, in consultation with County Planning Department, determined that an amendment to the S.D. 133 Zone to recognize the new footprint as proposed in the revised plans dated December 2020 could be supported by staff. This revised layout maintains the existing water yard and side yard setback of 4.5 metres (15 feet) and expands the dwelling to the rear and eastward on the lot. The proposal also includes the demolition and rebuild of the existing garage located approximately 30 metres from the lake. Appropriate studies including Environmental Impact Study (or planting plan in lieu as per ORCA policy) for development within 30 meters of the high-water mark as well as an Archaeological Assessment will be required to be submitted as part of the application. These studies will be reviewed and approved by the appropriate agencies and a public meeting will be held prior to final decision by Council. Otherwise, if the applicants do not wish to proceed with the rezoning application, they have the options to expand to a two-story dwelling, rebuild on the same footprint or construct a new dwelling at the 30-metre water yard setback under the existing S.D. 133 provisions.

Financial Impact: All costs related to a rezoning are the responsibility of the applicant.

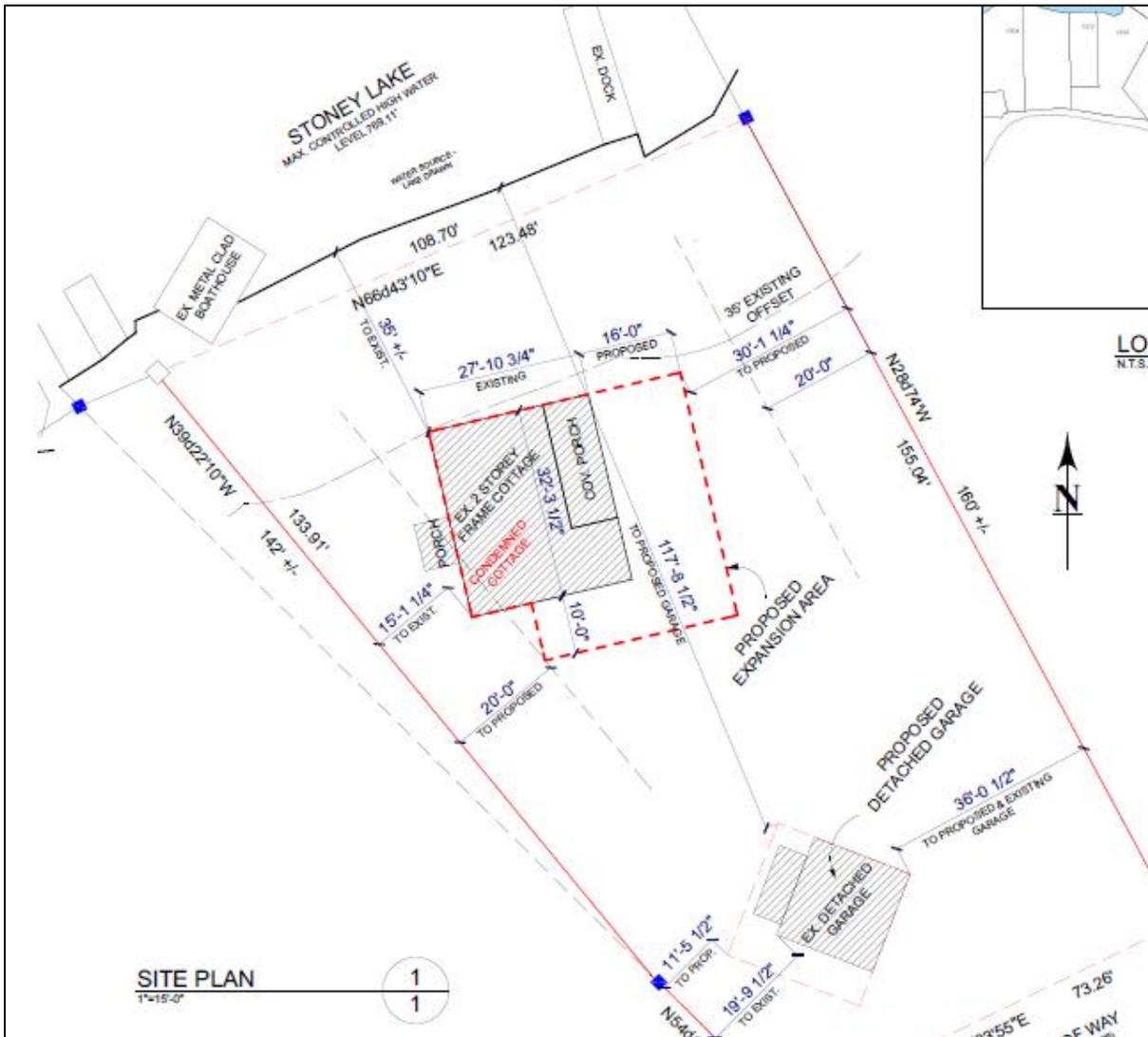
Strategic Plan Applicability: N/A

Sustainability Plan Applicability: N/A

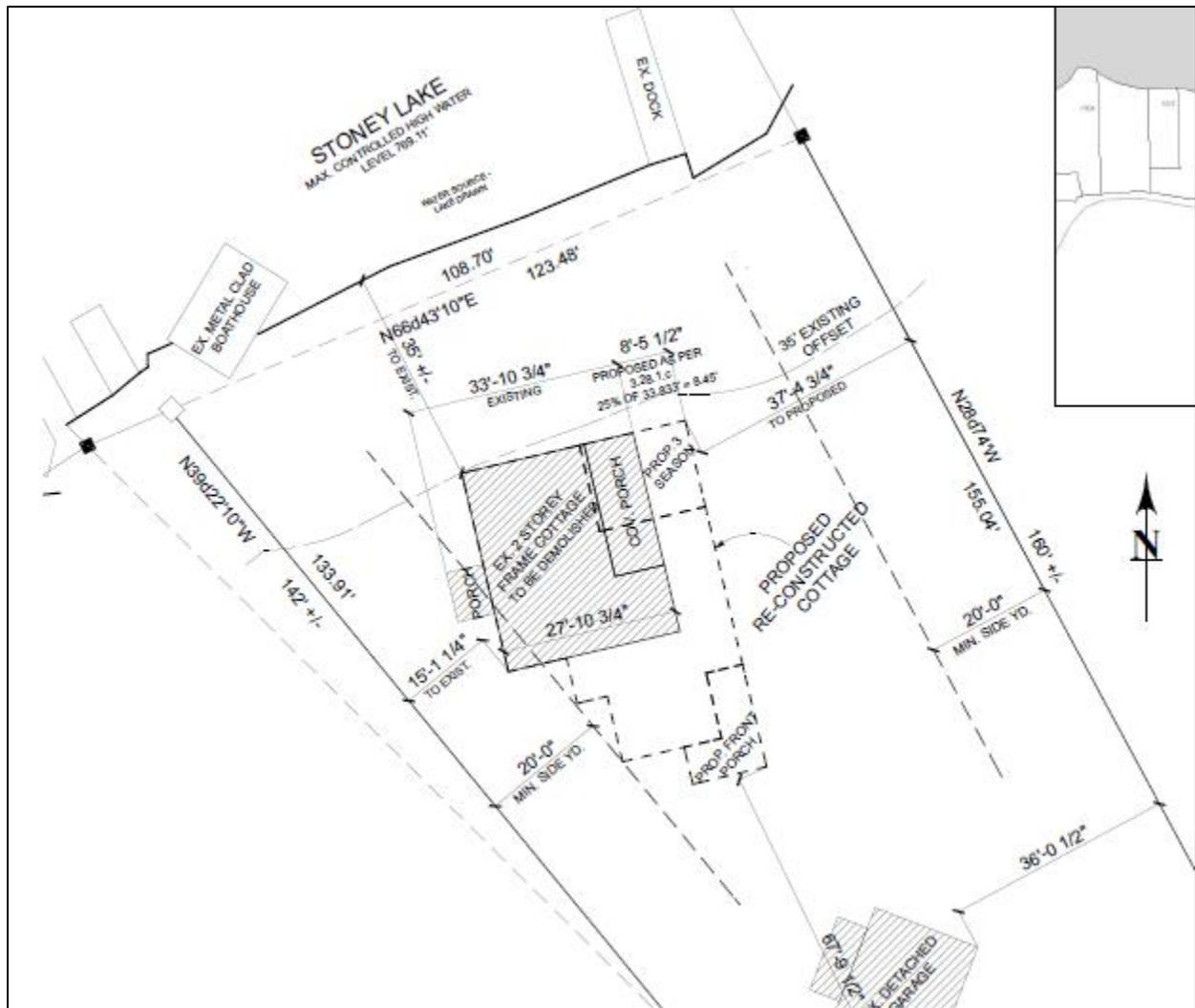
Appendix A: Aerial Imagery



Appendix B: Proposed Site Plans



Original October 2020



Revised December 2020

Appendix C: Zoning Excerpts S.D. 133 & S. 3.28

21.133 Special District 133 (S.D. 133) Zone - Roll No. 020-005-36300

No person shall within any Special District 133 (S.D. 133) Zone use any land, or erect, alter or use any building or structure except in accordance with the following provisions.

21.133.1 Permitted Uses

21.133.1.1 All uses permitted in the Limited Service Residential (LSR) Zone of this By-law, shall apply.

21.133.2 Regulations for Uses Permitted in Section 21.133.1.1

All provisions and regulations of the Limited Service Residential (LSR) Zone of the By-law shall apply with the following exceptions:

a) Minimum Lot Frontage 32.9 m

All minimum setbacks for all buildings, existing at the time of passing of this by-law shall be as shown on the Plan of Survey on file with the Township office as prepared by Beninger Surveying Ltd. and dated August 6, 2003.

All provisions and regulations of the Limited Service Residential (LSR) Zone (Section 7) of this By-law, shall apply to any new construction of the subject property.

3.28 Non-Complying Buildings or Structures

3.28.1 Where a building or structure which lawfully existed on a lot as of the date of the passing of this By-law, and having less than the minimum frontage and/or area, or having less than the minimum setback and/or yard or any other provision required in this By-law, the said building or structure shall be deemed to comply with this By-law with respect to any deficiency or deficiencies; and further the said building or structure may be enlarged, reconstructed, repaired, altered or renovated provided that:

- a) The enlargement, reconstruction or renovation does not further reduce such setback and or front yard and/or side yard and/or rear yard or water yard having less than the minimum required by this By-law; and
- b) All other provisions of this By-law are complied with.
- c) Notwithstanding the provisions of this section, where a deficiency is in the front or water yard, any proposed enlargement or extension of a building or structure which existed at the date of passing of this by-law, shall not exceed 25 percent of the lateral dimension of the existing building or structure.

- d) For the purpose of this section, lateral dimension shall mean that part of a building or structure which defines a front or water yard and which is otherwise situated more or less parallel to the corresponding high water mark or road.
- e) Notwithstanding the provisions of this By-law, where a building or structure which legally existed on a lot as of June 1, 2010, has less than the required 30 metre water yard setback, the said building or structure shall be deemed to comply with this By-law with respect to the deficiency and further, the said building or structure may be enlarged, reconstructed, repaired, altered or renovated in compliance with subsections a), b), c) and d), where applicable.
- f) Where an enlargement, reconstruction or renovation is proposed on a waterfront lot of record, that has an existing structure(s) and where a planning application or process is required to allow for the proposed new enlargement, reconstruction or renovation, and where one or more walls of an existing structure are within a minimum required setback(s) as set out in the applicable section of the Township Zoning Bylaw, the walls and the supporting floor structure for those walls that are within the deficient yard(s), must be kept in their entirety and incorporated into the new proposed structure.

Appendix D: Severance Sketch (2002)

