April 27, 2024

South Pender Island Local Trust Committee

I am expressing my concerns with the changes to dwelling sizes, setbacks and height.

Under Bylaw 114, the permitted dwelling size on a 1 acre lot was 3800 sq. ft. Bylaw 122 changed the maximum dwelling size to 3000 sq. ft. My concern with the reduction in dwelling size is twofold. Previously I could have added on to my dwelling as I am not at the maximum size. However, under the new bylaw, my dwelling has become legal non-conforming which means that I would be required to make an application for a variance to add to my dwelling. There is no guarantee that a variance would be granted.

There is no science related to the dwelling sizes contained in Bylaw 122. In fact there were seven proposals before the current dwelling sizes were adopted. No reasons were given for the various dwelling sizes other than conforming to our OCP and keeping rural character. Our bylaws have always conformed to the OCP and rural character. Bylaw 114 conformed to our OCP as was evidenced by the Trust Executive approving it.

If returning to dwelling sizes per Bylaw 114 is not acceptable, I suggest some compromise which would increase the dwelling sizes per Bylaw 122 to sizes where most dwellings would no longer be nonconforming. This would then allow the exception clause which is problematic to be stricken from the bylaw.

Bylaw 122 has also increased the setback from the sea from 25 ft to 50ft which has made the location of our cottage legal non-conforming. I mentioned previously that besides the setback requirements there are other issues that a homeowner must consider. These include covenants which restrict where building can occur. In my case, 0.4 acres of my lot has a covenant which restricts where a dwelling can be built. I know that many properties along Canal Road have similar covenants. I suggest that you consider mapping the covenanted areas to get a better picture of the extent of how covenants restrict the building areas on many lots. Other considerations include separation requirements between the well and septic field and then there are also topography limitations. With respect to increasing the side setbacks only for dwellings and cottages, I can see no logic in this. One could build a workshop which could potentially create more noise than noise from a dwelling if the issue is noise. I have heard that increasing setbacks would preserve the environment but I do not

see how the new setbacks do that as there is no restriction on clearing any areas on a lot. It seems that the concerns with setbacks may relate only to some areas such as Gowlland Point where there are long, narrow lots. These lots were created before subdivision and zoning bylaws were in place. Our bylaw now provides that no lot can have a depth greater than three times its width (Sec. 8.6(2). Perhaps a specific zone could be created for this area to address the local concerns rather than imposing setbacks for all lots which has caused many lots to become nonconforming with respect to the new setbacks. With respect to the seback from the sea, I do not see how this will protect the environment and I expect that it would lead to more land clearing to provide view corridors. The environment is being damaged by erosion from the sea so what would be more important is allowing measures that would protect further erosion. I know that part of the foreshore on my property is being undercut and we will soon lose some trees. The same problem has caused numerous trees to come down along the canal and much of the archeological dig areas are disappearing.

Another factor that does not seem to have been considered is the footprint of a dwelling in relation to its size. A 3000 sq. ft dwelling on one level versus a 3000 sq. ft. dwelling on two levels reduces the footprint by half. This means less land clearing and hence preservation of the environment.

I also do not understand why any area more than 5 ft is considered as part of the dwelling area. Surely there should be a minimum height of 8 ft before an area is considered habitable. I also do not understand why an attached garage is included in the dwelling size as it is not a habitable area. In fact there are efficiencies in attaching a garage to the dwelling and there is also less clearing. Both these issues could be addressed by amending the definition of “floor area” in our LUB.

Bylaw 122 also changed the maximum height of dwellings. This was done after the public meetings were completed and there were no reasons given for this change. So again, my dwelling has become non-conforming on this aspect as well. I also note that there is no provision clause in Bylaw 122 to be able to rebuild to the current height.

With respect to legal non -conforming, I do not accept a FAQ prepared by Trust staff as confirmation that I can rebuild to the same size on the same location. The current FAQ is the third version. Why is it always changing? There are also many inaccuracies in the current FAQ. I have asked several times for the legal opinion on which staff made these statements and have yet to be provided with it. The current exception

wording in our LUB – Subsection 5.1.(6) provides that a legal dwelling constructed prior to September 15, 2022 may be replaced, re-constructed or altered provide that it does not exceed the floor area of the dwelling on the lot on September, 15, 2022. This is problematic as it only allows what was initially there rather than what the current bylaw provides.

I also do not understand bringing in bylaw changes that made many properties non-conforming. It would be far better to adjust the dwelling sizes such that most properties remain conforming. Normal planning practices would consider how many how many properties may be affected by a proposed change and assess whether the proposed change warrants taking such a drastic step. Nonconforming should be the exception rather than the norm.

I also want to comment on variances. They should be the exception rather than a means to control development. The purpose of land use bylaws is to control development. The number of properties that are now nonconforming could lead to many variance applications. This is a costly and time-consuming process. It also has the potential to pit neighbour against neighbour as a variance application has to be referred to property owners within a 100 meter radius of the subject property. There is also no guarantee that a variance will be granted.

Thank you for your consideration.

Jane Perch