

**ROCKY VIEW COUNTY  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2019-SDAB-003

File No.: 04716008; PRDP20184421

Appeal by: Anthony Spensley

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 January 09

Decision Date: 2019 January 23

Board Members: D. Kochan, Chair  
D. Henn, Vice-Chair  
I. Galbraith  
H. George  
W. Metzger

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**DEVELOPMENT APPEAL DECISION**

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**INTRODUCTION**

[1] This is an appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued December 21, 2018. In this decision the Development Authority refused a development permit for the construction of an Accessory Dwelling Unit (garden suite), and relaxation of the maximum building area for an existing accessory building (garage/kennel building), and the relaxation of the total building area for all accessory buildings at 242209 Range Road 33 (the Lands).

[2] Upon notice being given, this appeal was heard on January 9, 2019 in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

**DECISION**

[3] The appeal is allowed and the decision of the Development Authority is varied. A development permit shall be issued with the following conditions:

Description:

- 1) That an accessory dwelling unit (secondary suite) approximately 105.91 sq. m (1,140.00 sq. ft.) in area, may be constructed on the subject parcel in accordance

with the site plan and drawing submitted with the application, and conditions of this permit.

- 2) That the existing accessory building (garage/kennel building), approximately 720.00 sq. m (7,750 sq. ft.) in area, may remain on the subject land in accordance with the site plan submitted with the application and conditions of this permit.
- 3) That the maximum building area for the existing accessory building (garage/kennel building) is relaxed from 225.00 sq. m (2,421.87 sq. ft.) to 720.00 sq. m (7,750.00 sq. ft.).
- 4) That the total building area for all accessory buildings is relaxed from 225.00 sq. m (2,421.88 sq. ft.) to 825.91 sq. m (8,890.02 sq. ft.).

Prior to Issuance:

- 5) That prior to issuance of this permit the Applicant shall confirm acceptance of or refusal to participate in the Voluntary Recreation Contribution for Community Recreation Funding on the form provided by the County and that the contribution, if accepted, is \$800, calculated at \$800.00 for each new residential unit.

Permanent:

- 6) That the accessory building (garage/kennel building) shall not be used for commercial purposes at any time, except for the Home-Based Business, Type I or an approved Home-Based Business, Type II.
- 7) That the accessory building (garage/kennel building) shall not be used for residential occupancy at any time.
- 8) That there shall be a minimum of one (1) parking stall maintained on-site at all times dedicated to the accessory dwelling unit (secondary suite).
- 9) That there shall be a distinct municipal address maintained for each dwelling unit (the dwelling, single detached and secondary suite) located on the subject site, to facilitate accurate emergency response.
- 10) That there shall be adequate water servicing provided for the accessory dwelling unit (garden suite) and it is the Applicant/Owner's responsibility to provide water quantity in accordance with the recommendations found in Module 2 of the document "Water Wells That Last for Generations" published by Agriculture and Agri-Food Canada, Alberta Environment, Alberta Agriculture and Food.
- 11) That it is the Applicant/Owner's obligation/responsibility to undertake water quality testing in accordance with the Guidelines for Canadian Drinking Water Quality and Alberta Health Services criteria. Should there be any adverse results or should questions arise concerning the interpretation of the results of the analyses, it will be the obligation/responsibility of the Owner/Applicant to contact the local Public Health Inspector for recommendations/ requirements.

- 12) That there shall be adequate sanitary sewer servicing provided for the accessory dwelling unit (secondary suite).
- 13) That any plan, technical submission, agreement, matter or understanding submitted and approved as part of the application, in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity.

Advisory:

- 14) That a building permit for the accessory dwelling unit (secondary suite) shall be obtained through Building Services prior to any construction taking place.
- 15) That the Applicant/Owner shall be responsible for obtaining all necessary building permits for the installation of a new private sewage treatment system.
- 16) That during construction, County Bylaw C-5772-2003, the "Noise Bylaw", shall be adhered to at all times.
- 17) That the site shall be maintained in compliance with County Bylaw No. C-7690-2017, the "Nuisance and Unsightly Property Bylaw", at all times. Any debris or garbage generated on the site shall be stored/placed in garbage bins and disposed of at an approved disposal facility.
- 18) That any other federal, provincial or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant/Owner.
- 19) That if the development authorized by this Development Permit is not commenced with reasonable diligence within 12 months from the date of issue, and completed within 24 months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.
- 20) That if this Development Permit is not issued by June 30, 2019 or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

## BACKGROUND

[4] On October 30, 2018, Anthony Spensley (the Applicant) submitted a development permit application for an accessory dwelling unit on the Lands.

[5] The Lands are located at NE-16-24-03-W5M, at the southwest junction of Range Road 33 and Township Road 243. The Lands are approximately 7.71 hectares (19.06 acres) in area and are owned by Ronald L. Spensley and Carolyn M. Spensley.

[6] The Lands' land use designation is Residential Two, which is regulated in section 50 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On December 21, 2018, the Development Authority refused to grant a development permit on the following grounds:

- (1) That the maximum building area of the existing accessory building (garage/kennel building) exceeds the maximum area as defined in section 50.3 of the *Land Use Bylaw*. The maximum building area permitted is 225.00 square metres. The proposed building area for the oversized shop is 720.00 square metres.
- (2) That the requested variance exceeds the total building area for all accessory buildings as defined in section 50.9 of *Land Use Bylaw*. The permitted total building area is 225.00 square metres. The proposed total building area is 825.91 square metres.

[8] On December 27, 2018, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 17 adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 and Rocky View County Council Policy C-327, *Circulation and Notification Standards*.

### **SUMMARY OF EVIDENCE**

[9] The Board heard verbal submissions from:

- (1) Oksana Newman, Planner, for the Development Authority;
- (2) Anthony Spensley, the Appellant; and
- (3) Dr. Kent Fellows, affected party, in support of the appeal.

[10] The Board received letters in support of the appeal from:

- (1) Dr. Kent Fellows of 33048 Township Road 243;
- (2) Dave and Calla Shaw of 33034 Township Road 243; and
- (3) Dave Sparkes of 33079 Township Road 243.

[11] The Board received no letter of opposition to the appeal.

#### ***Development Authority's Submissions***

[12] The Lands currently contain a single family dwelling and a detached garage with attached boarding kennel. The kennel includes indoor and covered outdoor runs. The kennel is not currently in operation. The Appellant's mother, an owner of the property, resides in the single family dwelling.

[13] The proposed development is for the construction of an accessory development unit, being a garden suite. The proposed garden suite would contain three bedrooms, two bathrooms, kitchen and living or dining room. A relaxation of the maximum building area for garage and kennel building and of the total building area for all accessory buildings is required for this development.

[14] The size of the existing garage and kennel accessory building unit exceeds the discretionary value of 225.00 square metres allowed under section 50.3 of the *Land Use Bylaw*. Therefore, the garage and kennel require a relaxation of 220.00%. The Development Authority only has the ability to grant a relaxation up to 10.00% of the building area for an accessory building under section 12 of the *Land Use Bylaw*. Therefore, the existing accessory building is included as a reason for refusal of the development permit application.

[15] The existing accessory building, being the garage and kennel building is 225.00 square metres and the proposed accessory dwelling unit, the garden suite, would add 105.91 square metres to the total accessory building area. Together the existing and proposed accessory buildings would have an area of 825.91 square metres and require a relaxation of 267.07% to what is permitted in the *Land Use Bylaw*. The Development Authority only has the ability to grant a relaxation up to 10.00% of the building area for an accessory building under section 12 of the *Land Use Bylaw*. The Development Authority has no discretion as to the total area for all accessory buildings. Accordingly, the total building area for all accessory buildings is included as a reason for refusal of the application.

#### *Appellants' Submissions*

[16] The Appellant wants to build a home on the Lands in order to be close to his mother. His mother lives in the primary dwelling on the Lands. The Appellant plans to assist his mother with the maintenance of the Lands.

[17] The Appellant's great-grandparents homesteaded in the area. His father ran a business on the property for over 40 years.

[18] The kennel business is not operating and the building is used for storage only. His mother has kept the kennel permit up-to-date but the Appellant has no intention of re-starting the business at this time.

#### *Dr. Kent Fellows Submissions*

[19] Dr. Fellows spoke is the Appellant's neighbour and spoke in support of the appeal.

[20] The type and size of house proposed is not unprecedented in the area. The area is a higher density so multiple homes on a property is common.

[21] The kennel predates many of the homes and other buildings in the area. Everyone who lives in the area is fully aware of the kennel's existence and they are not a nuisance to neighbouring lands.

[22] Higher density in the area, not unprecedented to have the higher density

[23] The Lands are well screened by trees and the proposed house is set back far enough so that it is not an issue to neighbours.

[24] The Spensley's are exemplary neighbours. There would be a positive impact to the area to grant the home. However, there is a negative impact if the development permit is not granted and the area possibly loses a great neighbour.

## FINDINGS & REASONS FOR DECISION

[25] The Board finds it has the authority to make a decision on this matter pursuant to section 687(3)(d) of the *Municipal Government Act*.

[26] Accessory buildings between 150.00 square metres and 225.00 square metres are a discretionary use in the Residential Two district, in accordance with sections 50 of the *Land Use Bylaw*.

[27] The Lands are large enough to accommodate the proposed development. There is also sufficient natural screening between the proposed development and the neighbouring parcels.

[28] The Lands will be brought into compliance with the *Land Use Bylaw* if the requested relaxations are granted.

[29] The Appellant's neighbours are in support of the proposed development.

[30] Given the above findings and pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that 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. The Board also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

## CONCLUSION

[31] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is revoked. A development permit shall be issued subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on January 23, 2019.



Don Kochan, Chair  
Subdivision and Development Appeal Board

**EXHIBIT LIST**

**DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD**

**NO.            ITEM**

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1.            Development Authority's Report to the Board (22 pages)
2.            Dr. Kent Fellows PowerPoint Presentation (12 slides)