

ROCKY VIEW COUNTY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Board Order No.: 2019-SDAB-013

File No.: 07020010; PRPD20190237

Appeal by: Mary Anne Schwengler

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 March 13

Decision Date: 2019 March 20

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

DEVELOPMENT APPEAL DECISION

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 February 7, 2019. In this decision the Development Authority refused a development permit for the construction of an accessory building requiring the relaxation of the building area and building height requirement at 254020 Township Road 274 (the Lands).

[2] Upon notice being given, this appeal was heard on March 13, 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 revoked. A development permit shall be issued subject to the following conditions:

Description:

1. That the proposed accessory building may take place on the subject land, in general accordance with the approved site plan and the conditions of this permit.
2. That the maximum building area for the accessory building is relaxed from 223.0 sq. m (2,400.35 sq. ft.) to 376.07 sq. m. (4,048.00 sq. ft.).

3. That the maximum building height for the accessory building is relaxed from 5.50 m (18.04 ft.) to 8.53 m (28.00 ft.).

Permanent:

4. That the accessory building (oversize barn) shall not be used for commercial purpose at any time, except for a Home-Based Business Type I.
5. That the accessory buildings shall not be used for residential occupancy purpose at any time.
6. That any plan, technical submission, agreement, or other matter submitted and approved as part of the Development Permit application, or submitted in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity.

Advisory:

7. That during construction, all construction and building materials shall be maintained on site in a neat and orderly manner. Any debris or garbage shall be stored/placed in garbage bins and disposed of at an approved disposal facility.
8. That during construction, the County's Noise Bylaw C-5772-2003 shall be adhered to at all times.
9. That a Building Permit/Farm Building Location Permit shall be obtained through Building Services prior to any construction taking place.
10. That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner.
11. 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 Authority.

BACKGROUND

[4] On January 23, 2019, Mary Anne Schwengler (the Appellant) submitted a development permit application for a storage and maintenance building that was oversized and over-height.

[5] The Lands are located at NE 20-27-25-W4M, at the northwest junction of Township Road 274 and Range Road 254. The Lands are approximately 2.99 hectares (7.4 acres) in area and are owned by the Appellant.

[6] The Lands' land use designation is Farmstead District, which is regulated in section 47 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On February 7, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) The proposed building area for the accessory building exceeds the maximum permitted amount as defined in section 47.3 of *Land Use Bylaw*. The permitted maximum building area for an accessory building area is 223 square meters (2,400.34 square feet) and the proposed accessory building's building area is 376.07 square meters (4,048.00 square feet); and
- (2) The proposed building height for the accessory building exceeds the maximum permitted amount as defined in section 47.7 of *Land Use Bylaw*. The permitted maximum height is 5.50 metres (18.04 feet) and the proposed height is 8.53 metres (28.00 feet).

[8] On February 13, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 4 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) Xin Deng, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority; and
- (3) Mary Anne Schwengler, the Appellant.

[10] The Board received no letters in support of or opposition to the appeal.

Development Authority's Submissions

[11] The Lands are developed with a dwelling that has an attached garage. There are no other accessory buildings on the Lands. The surrounding area is agricultural in nature. Most of the adjacent land is owned by the Appellant.

[12] The Appellant proposes to construct a new shop to store, repair and maintain farm equipment within. The development permit application was assessed in accordance with sections 12 and 47 of the *Land Use Bylaw*.

[13] One reason for refusal was the building area of the proposed development exceeds what is allowed in the *Land Use Bylaw*. The variance required for the accessory building area is 68.64% and this is beyond the variance discretion of the Development Authority as defined in section 12.

[14] The second reason for refusal was proposed building height exceeds what is allowed in the *Land Use Bylaw*. The variance required for the building height is 55.09% and this is also beyond the variance discretion of the Development Authority as defined in section 12.

[15] Farming is not considered to be a commercial use.

[16] Due to the topographic constraints of the area, Rocky View County built Township Road 274 at its current location south of the Lands and not along the road allowance along the northern border of the Lands.

[17] The Appellant has indicated that the proposed building height is now 26 feet, not 28.

Appellant's Submissions

[18] The Appellant has lived on property for 15 years. This is the first time she has applied to build any out buildings on the Lands. Her family owns all the adjacent land to the proposed building site.

[19] The Appellant has a substantial amount of farm equipment to be housed, repaired, and maintained. The reason for the proposed building height is to accommodate the larger equipment, such as a hoisting system.

[20] The Appellant's current storage building is not on the Lands and is at capacity.

[21] There has been an increased incidence of rural crime in the area. The proposed development would be used to secure her assets safely behind locked doors.

[22] The proposed development will be pleasing to the eye. It will not be detrimental to neighbouring land.

[23] There is a play house and trees on the road right-of-way on the northern edge of the Lands.

[24] The nearest neighbour is nearly a mile away. There is a closer farmhouse but it is owned by the Appellant.

Development Authority's Rebuttal

[25] Should the Board wish to approve the development at 26 feet high and not 28 feet high, the Development Authority recommends that the Board include a prior-to-issuance condition to submit updated plans to the Development Authority.

[26] Given the location and the surrounding property, there is likely no impact if the height relaxation is left at 28 feet.

[27] Based on Appellant's submissions, seems like just the height is changing and not the square footage.

FINDINGS & REASONS FOR DECISION

[28] An accessory building in excess of 80 square metres is a discretionary use in the Farmstead District, in accordance with section 47 of the *Land Use Bylaw*.

[29] 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*.

[30] The Board reviewed all evidence and arguments, written and oral, submitted by the parties and will focus on key evidence and arguments in outlining its reasons. The Board also considered the context of the proposed development, applicable legislation, plans, policies, sound planning considerations and the merits of the application.

[31] The proposed accessory building is in keeping with the rural nature of the area and is required to secure personal property from theft.

[32] The nearest neighbor is almost a mile away and the Board received no letters in opposition to the appeal. All the adjacent properties are agricultural. The Board finds there will be a minimal impact to adjacent properties.

[33] 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

[34] 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 March 20, 2019.



Don Kochan, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

NO. ITEM

1. Development Authority's Report to the Board (26 pages)