

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

Board Order No.: 2019-SDAB-011

File No.: 06718018; PRDP20184785

Appeal by: Stacy Dallyn
Michelle Dallyn

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 February 20

Decision Date: 2019 March 07

Board Members: D. Kochan, Chair
D. Henn, Vice-Chair
I. Galbraith
H. George
S. Hartley

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 8, 2018. In this decision the Development Authority refused a development permit for the construction of an accessory building and relaxations of the minimum side yard setback and total size of all accessory buildings at 262080 Prairie Wolf Pointe (the Lands).

[2] Upon notice being given, this appeal was heard on February 20, 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 overturned. A development permit shall be conditionally approved subject to the following conditions:

Description:

- 1) That construction of the proposed accessory building (oversized shop) may take place on the subject property, in general accordance with the submitted site plan and application.
- 2) That the maximum building area for the accessory building (oversized shop) is relaxed from 150.00 square metres (1,614.59 square feet) to 390.19 square metres (4,200.00 square feet) in area.
- 3) That the maximum height for the accessory building (oversized shop) is relaxed from 7.00 metres (22.96 feet) to 7.21 metres (23.65 feet).
- 4) That the total building area for all accessory buildings (oversized shop & shed) is relaxed from 225.00 square metres (2,421.88 square feet) to 424.38 square metres (4,568.00 square feet).

Prior-to-Issuance

- 5) The Applicant/Owner shall, to the satisfaction of the Development Authority, submit amended site plans to Rocky View County Planning Services.
- 6) The amended site plans shall ensure the existing accessory building (sea container) meets the minimum setback requirements of the Rocky View County, *Land Use Bylaw (C-4841-97)*.

Permanent:

- 7) That the exterior siding and roofing materials of the accessory building shall be similar/cohesive to the existing dwelling, single-detached and/or area.
- 8) That the accessory building shall not be used for commercial purposes at any time, except for a Home-Based Business, Type I.
- 9) That the accessory building shall not be used for residential occupancy purposes at any time.

Advisory:

- 10) That a Building Permit shall be obtained, through Building Services, prior to any construction taking place.
- 11) That during construction of the accessory buildings, 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.
- 12) That during construction of the accessory building, the Applicant/Owner shall adhere to the County's *Noise Bylaw (C-5772-2003)* at all times.
- 13) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.
- 14) 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 November 26, 2018, Stacy Dallyn and Michelle Dallyn (the Appellants) submitted a development permit application for the construction of an oversized garage.

[5] The Lands are located at SW-18-26-03-W5M, approximately 3 kilometres west of Glendale Road and 0.2 kilometres north of Township Road 262. The Lands are approximately 3.64 hectares (9.01 acres) in area and are owned by the Appellants.

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

[7] On February 8, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) That the maximum building area of the proposed accessory building (oversize shop) exceeds the maximum area as defined in section 50.3 of the *Land Use Bylaw*;
- (2) That the height of the proposed accessory building (oversize shop) exceeds the maximum permitted height requirement as defined in section 50.7(b) of the *Land Use Bylaw*;
- (3) That the total building area for all accessory buildings exceeds the maximum permitted as defined in section 50.9 of *Land Use Bylaw*; and
- (4) That the side yard setback of the existing accessory building (sea container) does not meet the minimum side yard setback requirement as defined in section 50.5 (b)(iv) of *Land Use Bylaw*.

[8] On February 8, 2019, the Appellant's appealed the Development Authority's decision. The Notice of Hearing was circulated to 18 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) Susan Lamola, Municipal Planner, for the Development Authority;
- (2) Sean Maclean, Supervisor Planning and Development, for the Development Authority; and
- (3) Stacy Dallyn for the Appellants.

[10] The Board received nine letters in support of or opposition to the appeal from:

- (1) Jay Tonin of 262050 Prairie Wolf Pointe;

- (2) Tim Hall of 35202 Township Road 262;
- (3) Brett Houston of 35188 Township Road 262;
- (4) Vivien Chu of 35254 Township Road 262;
- (5) George Anderson of 35226 Township Road 262;
- (6) Mandy Warren and Darron Warren of 35162 Township Road 262;
- (7) Kim Shacabura of 262035 Prairie Wolfe Pointe;
- (8) Eric Adam of 35166 Township Road 262; and
- (9) G. Bradley Moore of 262100 Prairie Wolf Pointe.

[11] The Board received no letters in opposition to the appeal.

Development Authority's Submissions

[12] The Lands are developed with a single-detached dwelling and two accessory buildings, a shed and a sea container. The sea container was placed on the Lands without permits.

[13] The proposed accessory building would be constructed with metal siding and would be green with a brown roof with black trimming. The accessory building is intended for storage of equipment and personal property.

[14] The development permit application was assessed in accordance with the Rocky View County and Cochrane Intermunicipal Development Plan, the Bearspaw Area Structure Plan, and the *Land Use Bylaw*.

[15] The application was refused for several reasons. First, the proposed accessory building exceeds the maximum building area as defined in section 50.3 of the *Land Use Bylaw*. The proposed oversized garage is 390.19 square feet in area. This is a requested 73.4% relaxation of what is permitted in the *Land Use Bylaw*. This request exceeds the Development Authority's variance discretion.

[16] Second, the total building area for all accessory buildings would become 424.38 square metres with the construction of the proposed accessory building. This is an 88.61% variance request and the Development Authority does not have any variance discretion on varying total building area for all accessory buildings.

[17] Third, the existing accessory building, the sea container, does not meet the minimum side yard setback as defined in section 50.5c(iv) of the *Land Use Bylaw*. The current setback from the side yard is 0.91metres. This is a requested 69.67% relaxation of what is permitted in the *Land Use Bylaw*. This request exceeds the Development Authority's variance discretion.

[18] In the notice of refusal, the Development Authority erred in saying that the building height that a reason for refusal. The proposed height is 7.21 metres. This requires a 3.0% variance and is within the Development Authority's discretion to grant. The Appellant has been notified of this error.

[19] The condition that the exterior of the accessory building shall be similar to the existing home is standard. The intent of this condition is that the new accessory building looks cohesive with the existing principal building. The exterior of the accessory building does not need to look exactly the same as the principal building, nor does it need to be constructed with the same materials. The accessory building must only look similar.

Appellants' Submissions

[20] Stacy Dallyn spoke on behalf of the Appellants.

[21] The Appellants spoke with their neighbours about the proposed development. They heard their comments and feedback about the oversized shop. Nine signed letters of support were provided to the Board.

[22] The Appellants want the accessory building to coordinate with the existing property. The colours of the proposed accessory building match the house, including the soffits, fascia, and the black overhead garage doors. The house is stucco and proposed siding on accessory building is metal but will still visually match with the house.

[23] The size of the proposed garage is so that the Appellants can secure everything under one roof. This includes acreage equipment, skid steers, a garden tractor, an ATV, a boat, hay storage, cattle stalls, and equipment and supplies for raising cows. There has been theft in the area. Recently, someone try to steal a truck right out of their yard.

[24] The sea container would still be required after the construction of the accessory building but it can be moved to meet the setback requirements.

[25] The Development Authority's report indicates there is a problem with the rear yard setbacks. The report states that the setback proposed accessory building will be set back 18.29 metres from the east property line. This is well within the requirement of a 7.00 metre setback.

FINDINGS & REASONS FOR DECISION

[26] 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*.

[27] Accessory buildings greater than 150 square metres and less than 225 square metres are a discretionary use in the Residential Two District, in accordance with section 50 of the *Land Use Bylaw*.

[28] The Appellants require the proposed oversized accessory building in order to secure their personal property and keep their property tidy. The Lands are large enough to accommodate the development and there is support amongst the neighbors' for the oversized accessory building.

[29] The proposed Accessory Building will be in keeping with the rural character of the area.

[30] The Appellant stated they are willing to move the sea container to bring it into compliance with the *Land Use Bylaw*.

[31] 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

[32] 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 7, 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 (31 pages)