

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

Board Order No.: 2019-SDAB-015

File No.: 05619060; PRDP20190508

Appeal by: Betty Kost

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 April 03

Decision Date: 2019 April 18

Board Members: D. Kochan, Chair
K. Hanson
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 28, 2019. In this decision the Development Authority refused a development permit for an accessory building and the relaxation of the total number of accessory buildings at 78 Campbell Drive (the Lands).

[2] Upon notice being given, this appeal was heard on April 3, 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 issued subject to the following conditions:

Description:

- 1) That the existing accessory buildings may remain on the subject land, in general accordance with the approved site plan and conditions of this permit.

- 2) That the maximum total number of accessory buildings is relaxed from Two (2) to Four (4).

Permanent:

- 3) That the accessory building (garage) shall not be used for commercial purpose at any time, except for a Home-Based Business Type I.
- 4) That the accessory buildings shall not be used for residential occupancy purposes at any time.
- 5) 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:

- 6) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner.

BACKGROUND

[4] On February 19, 2019, Betty Kost (the Appellant) submitted a development permit application for an accessory building. The Appellant wanted to bring the Lands into compliance and obtain a stamped Real Property Report for a Certificate of Compliance.

[5] The Lands are located at NW-19-25-02-W5M, located south of Highway 1A on the north side of Campbell Drive. The Lands are approximately 0.83 hectares (2.04 acres) in area and are currently owned by Andrew and Erin Nguyen.

[6] The Lands' land use designation is Residential One District, which is regulated in section 48 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On February 28, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) The existing number of accessory buildings exceed the maximum requirement as defined in section 48.10 of *Land Use Bylaw*. The permitted maximum number of accessory buildings is two and the existing number of accessory buildings is four.

[8] On March 11, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 22 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) Betty Kost and John Kost, the Appellants.

[10] The Board received one letter in support of the appeal from Carrie Cline of 72 Campbell Drive. No letters of opposition to the appeal were received by the Board.

Development Authority's Submissions

[11] The Lands are developed with one dwelling, one detached garage, two wood sheds, and one plastic greenhouse. The detached garage is under 100 square metres in area and the development permit for it was issued in 2002. The green house and two sheds are under 10 square metres in area so a development permit and building permit are not required.

[12] The Applicant submitted a Real Property Report for a Certificate of Compliance. Administration determined that the Real Property Report cannot be stamped as there are too many accessory buildings. The Applicant was advised to either remove two accessory buildings, to meet the requirement of the *Land Use Bylaw*, or apply for a development permit requesting that the number of accessory buildings be relaxed from two to four.

[13] The development permit application is for existing accessory buildings and the relaxation of the total number of accessory buildings. The application was assessed in accordance with sections 12 and 48 of the *Land Use Bylaw*. As the existing number of accessory buildings exceeds the maximum requirement outlined in section 48, and are beyond the variance discretion of the Development Authority defined in section 12, the application was refused.

[14] The greenhouse is made of plastic and is an enclosed structured. It is therefore an accessory building structure. The *Land Use Bylaw* does not specify that building materials is what makes a structure an accessory building or not.

Appellant's Submissions

[15] John Kost, Betty Kost, and their parents, bought the property in 2004. The garage and house were existing at that time. The new owners wanted an updated a Real Property Report. The Appellants' did their research and found that small, non-permanent sheds do not require a development permit.

[16] The sheds were added to increase storage space to accommodate their father's passions of woodworking and gardening. The garden sheds are on skids and not permanent. They have no power and are used to house gardening equipment.

[17] The Appellants submitted photos of the Lands, taken over the last one to five years, to better show the accessory buildings situated in respect to the property. These photos reflect the current state of the Lands.

[18] The units cannot be seen from the road or by the neighbours. The Lands back onto a school and there is little activity there.

FINDINGS & REASONS FOR DECISION

[19] Accessory buildings are a discretionary use in the Residential One District, in accordance with sections 12 and 48 of the *Land Use Bylaw*.

[20] 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*.

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

[22] The photos of the Lands show the property to be neat and tidy. The accessory buildings are well-situated on the Lands in relation to the other buildings. They are in the back part of the property and not visible from the main road. The accessory buildings are well screened by natural vegetation. The Board received support of the appeal from a neighbour.

[23] Given the above findings and pursuant to section 687 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

[24] 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 April 18, 2019.

“ Don Kochan ”

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 (30 pages)
2.	Property photos submitted by the Appellant (2 pages)