

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

Board Order No.: 2019-SDAB-016

File No.: 04727035; PRPD20190054

Appeal by: Barry Johnson

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 construction of an accessory building (oversize shop), relaxation of the maximum building area, relaxation of the maximum total building area for all accessory buildings, and relaxation of the maximum height requirement at 218 Huggard Road (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, 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 an accessory building (oversize shop), may be constructed on the subject lands in accordance with the site plan, elevation drawings and floor plans as submitted with the application and the following conditions:

- (a) That the maximum building area, in accordance with the approved site plan, elevation drawings and floor plans as submitted with the application, is relaxed from 225.00 sq. m (2,421.88 sq. ft.) to 245.26 sq. m (2,640.00 sq. ft.).
- (b) That the maximum total building area for all accessory buildings, in accordance with the approved site plan, elevation drawings and floor plans as submitted with the application, is relaxed from 225.00 sq. m (2,421.88 sq. ft.) to 245.26 sq. m (2,640.00 sq. ft.).
- (c) That the maximum height requirement for the accessory building (oversize shop), in accordance with the approved site plan, elevation drawings and floor plans as submitted with the application, is relaxed from 7.00 m (22.96 ft.) to 8.32 m (27.30 ft.).

Permanent:

- (2) That the proposed accessory building (oversize shop) shall not be used for commercial purposes at any time, except for a Home-Based Business, Type I or an approved Home-Based Business, Type II.
- (3) That the proposed accessory building (oversize shop) shall not be used for residential occupancy purposes at any time.

Advisory:

- (4) That during construction of the accessory building, 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.
- (5) That a Building Permit and sub-trade permits shall be obtained through Building Services, prior to any construction taking place.
- (6) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.
- (7) 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 7, 2019, Barry Johnson (the Appellant) submitted a development permit application for the construction of an accessory building (oversize shop), relaxation of the maximum building area, relaxation of the total building area for all accessory buildings and relaxation of the maximum height requirement.

[5] The Lands are located at NW-27-24-03-W5M, approximately 0.41 kilometre (1/4 mile) east of Range Road 33 and on the north side of Huggard Road. The Lands are approximately 1.62 hectares (4.0 acres) in area and are owned by Patricia Anne Bury (the Owner).

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

- (1) The maximum building area exceeds the allowable area as defined in section 50.3 of *Land Use Bylaw*.
- (2) The maximum total building area for all accessory buildings exceeds the maximum total building area requirement as defined in section 50.9 of *Land Use Bylaw*.
- (3) That the height proposed for the accessory building (oversize shop) exceeds the maximum height requirement as defined in section 50.7(b) of *Land Use Bylaw*.

[8] On March 4, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 24 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) Jessica Anderson, Municipal Planner, for the Development Authority;
- (2) Barry Johnson, the Appellant; and
- (3) Anne Bury, the Owner, in support of the Appellant.

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

- (1) Curtis Cann of 234 Huggard Road; and
- (2) Jens and Tina Christiansen of 194 Huggard Road.

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

Development Authority's Submissions

[12] Central Springbank Area Structure Plan does affect the Lands but gives no guidance on the application.

[13] The Lands are surrounded by primarily residential properties in the immediate vicinity, with a large agricultural property to the north.

[14] An accessory building with an area between 150.00 square metres and 225 square metres is a discretionary use in the Residential Two District.

[15] The proposed development requires three relaxations to the *Land Use Bylaw*. The proposal complies with all other requirements of the Land Use Bylaw, including setbacks and maximum number of accessory buildings.

[16] Firstly, the maximum building area of an accessory building in this district is 225.00 square metres (2,421.88 square feet) and the proposed building area is 245.26 square metres (2,640.00 square feet). This variance exceeds the Development Authority's authority pursuant to section 12 of the *Land Use Bylaw*.

[17] Secondly, the Land Use Bylaw permits a maximum combined area for all accessory buildings of 225.00 square metres. There are no other accessory buildings on the Lands and the proposed building area is 245.26 square metres. This is a variance of approximately 9% and the Development has no discretion to grant this relaxation.

[18] Thirdly, the maximum height of an accessory building is 7.00 metres (22.96 feet). The proposed accessory building is 8.32 metres (27.30 feet) This is a variance of approximately 19%. The Development Authority can grant a variance of up to 25% for building height but because there are other reasons for refusal, this request was not granted.

[19] The proposed location of the building is approximately 75 metres from the next closest dwelling and is unlikely to be in the principal view of this house.

Appellant's Submissions

[20] Barry Johnson, the Appellant, and Anne Bury, the Owner, spoke together.

[21] The Appellant currently lives in Calgary and is moving to the Lands. His present shop is full and he needs extra room to safely store his creations. The proposed accessory building is to be a hobby workshop. He makes furniture for around the house. The Appellant is retired and has no intention to use the shop for commercial purposes.

[22] When designing the shop, the Appellant assumed the area allowed was 2421 square feet plus a 10% variance. He kept within that for the shop and then added on a porch that is wide open. The purpose of the porch was to make the accessory building look better and not just an equipment storage facility. In addition to the visual appeal, the porch can be used to sit and enjoy the mountain views. The Appellant did not understand that the area allowed was a strict requirement.

[23] The height of the roof is needed to accommodate the woodworking. There are two stories inside with a mezzanine. The woodworking shop is on the main floor. He required ten feet below the mezzanine so he could safely work with plywood. The mezzanine floor structure accounts for another two feet and then the office upstairs. With the roof pitch added, the height came within the 25% of variance allowed.

[24] They want the shop to match the house as best as possible. The house has a stone-face front with brown siding on the remainder. The siding of the shop would match the siding of the house. The roof would also be similar.

[25] The Appellants are not aware of any runoff issues with the property. The back of the Lands had once been leveled off for a baseball field.

[26] The shop will have water and power, including a bathroom and shower. Springview Estates Water Cooperative will provide the water. The water usage will be well within the limits of the Cooperative. The shop will have its own septic holding tank.

[27] There are two lines of trees along the Land's edge, including spruce trees. The trees were recently trimmed but the tree line is still higher than the proposed shop height.

[28] The property directly behind the Lands are open agricultural lands. It is open field that is hayed every year.

FINDINGS & REASONS FOR DECISION

[29] An accessory building is a discretionary use in the Residential Two District, in accordance with section 50 of the *Land Use Bylaw*.

[30] 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*.

[31] 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 considered the context of the proposed development, sound planning considerations, the merits of the application and all applicable legislation, plans, and policies.

[32] The proposed development in both use and form is consistent with the character of the neighbourhood. The proposed façade and design of oversized shop matches that of the house. The proposed development would be well-screened by mature trees on the Lands. The residents on either side of the Lands are in favour of the oversized shop.

[33] 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

[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 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 (22 pages)
2.	Property photos submitted by the Appellant (2 pages)