

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

Board Order No.: 2019-SDAB-020

File No.: 03305012; PRDP20184940

Appeal by: Tyler Anderson

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 April 24

Decision Date: 2019 May 07

Board Members: D. Henn, Chair
M. Bahcheli
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 March 25, 2019. In this decision the Development Authority refused a development permit for relaxations to the minimum side yard setback requirement for an existing single detached dwelling, the maximum building area for an existing accessory building, and the total building area for all accessory buildings at 230039 Range Road 284A (the Lands).

[2] Upon notice being given, this appeal was heard on April 24, 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 dwelling, single detached (existing) and accessory building (existing workshop) may remain on the subject property, in general accordance with the submitted Real Property

Report, as prepared by William Pang, File #2018-1649; dated June 7, 2018 and the submitted application.

- 2) That the maximum building area of the proposed accessory building (existing workshop) is relaxed from 150.00 sq. m (1,614.59 sq. ft.) to 202.97 sq. m (2,184.75 sq. ft.).
- 3) That the minimum side yard setback requirement for the dwelling, single detached (existing) is relaxed from 3.00 m (9.84 ft.) to 2.88 m (9.44 ft.).
- 4) That the total building area for all accessory buildings is relaxed from 225.00 sq. m (2,421.88 sq. ft.) to 349.95 sq. m (3,766.83 sq. ft.).

Permanent:

- 5) That the accessory buildings shall not be used for commercial purposes at any time, except for a Home-Based Business, Type I.
- 6) That the accessory buildings shall not be used for residential occupancy purposes at any time.

Advisory:

- 7) That a Building Permit shall be obtained through Building Services for the Workshop, Stucco Garage, and Wood Garage using the accessory building checklist.
- 8) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.

BACKGROUND

[4] On December 5, 2018, Tyler Anderson (the Appellant) submitted a development permit application for relaxations to the minimum side yard setback for a dwelling, to the building area for a workshop, and to the total building area for all three accessory buildings on the Lands.

[5] The Lands are located at SW-05-23-28-04, approximately 1.7 kilometres north of Highway 22X and on the west side of Range Road 284A. The Lands are approximately 2.42 hectares (6.00 acres) in area and are owned by Jason and Meaghan Cenaiko (the Owners).

[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 March 25, 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 (existing workshop) exceeds the maximum area as defined in section 50.2 of the *Land Use Bylaw*.
- (2) That the minimum side yard setback requirement for the dwelling, single detached (existing) exceeds the allowed total as defined in section 50.5(c)(iv) of the *Land Use Bylaw*.

- (3) That the requested variance exceeds the total building area for all accessory buildings as defined in section 50.9 of *Land Use Bylaw*.

[8] On March 28, 2019 the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 23 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) Jamie Kirychuk, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (3) Tyler Anderson, the Appellant;
- (4) Jason Cenaiko, an Owner of the Lands; and
- (5) Cheryl Bell, an owner of 284178 146 Avenue SE, in support of the appeal.

[10] The Board did not receive any letters in support of or opposition to the appeal.

Development Authority's Submissions

[11] The Lands are developed with an existing single detached dwelling and three accessory buildings. The Lands were created in a subdivision that took place on March 22, 2016. Access to Lands is achieved via a panhandle approach that runs along the northern property line.

[12] This development permit application is the result of a compliance report completed on June 26, 2018. The Appellants submitted a Real Property Report, dated June 7, 2018. In reviewing the report, the County determined that the Lands were out of compliance with the *Land Use Bylaw*. The proposed development permit is to bring the Lands into compliance.

[13] Currently, the dwelling on the Lands is setback 2.88 metres from the side yard. The minimum side yard setback requirement is 3.00 metres. This is a variance of 4% from the *Land Use Bylaw*.

[14] The existing workshop on the Lands has a building area of 202.97 square metres. The maximum building area permitted for an accessory building in this district is 150.00 square metres. This is a variance of approximately 35%.

[15] The total building area for all accessory buildings on the Lands is 225.00 square metres. The maximum total building area for accessory buildings is 349.95 square feet. This is a variance of approximately 56%.

[16] The need for this development permit is due in large part to the subdivision in 2016. Prior to the subdivision, the Lands would have been in compliance.

Appellant's Submissions

[17] Tyler Anderson is an adjuster with Central Alberta Adjusters, assigned by FCT Insurance Company Ltd. to handle title insurance claims on behalf of the Lands' Owners.

[18] The Owners purchased the Lands in May of 2018. They went through the usual inspections and due diligence. The Owners were notified that the existing buildings on the Lands were an issue only after the sale had closed and they were residing on the property. The Owners had bought title insurance and opened a claim once they learned the Lands were not in compliance with the *Land Use Bylaw*.

[19] The accessory buildings on the Lands have been there for approximately 40 years and were not built with permits. Contractors and trades are prepared to come in and make sure the buildings are up to code, if and when the necessary development permits are granted by the Board.

[20] The accessory buildings were an incentive to purchasing the Lands. The Owners use the accessory buildings in their daily living and running a small business out of their home.

Jason Cenaiko's Submissions

[21] Jason Cenaiko is an Owner of the Lands. At the time of purchase, he believed that the accessory buildings were in compliance with the *Land Use Bylaw*.

[22] The accessory buildings are needed to store and protect their personal property. The accessory buildings are currently filled with the Owners' personal property and are essential to their day-to-day use of the Lands. The Owners don't know what they would do if they lost a building or two. They would likely have to rent a building to store their personal property.

[23] The large bins in pictures are for cleaning up the surrounding area and buildings. The Lands were in disrepair at time of purchase.

[24] The Owners own a painting company. The majority of the paints are latex. Some of the paints are stored on site and all are disposed properly.

Cheryl Bell's Submissions

[25] Cheryl Bell is an owner and resident of 284178 146 Avenue SE. She shares a fence with the Owners and lives directly south of the Lands. She has been in her home since the previous owners of the Lands lived there.

[26] The Lands have mature trees. Due to the screening, it is difficult to see the accessory buildings and activities on the Lands.

[27] Since moving in, the Owners are trying to clean up the yard and overgrown trees and bushes.

Development Authority's Rebuttal

[28] The Development Authority sympathizes with the inconvenience that the Appellant and Owners are faced with and reminds the Board of the test for section 687 of the *Municipal Government Act*. It is not the user that is relevant, including their knowledge at time of purchase.

[29] The need for the side yard setback relaxation would have arisen from the subdivision. The side yard setback may infringe on building codes. The Development Authority cannot advise if there is a legal liability if the Board was to approve the requested relaxations.

[30] The current driveway is a private driveway. Currently, the County has no plans to create a public road here or widen the road. An access easement agreement is likely in place to allow the use of the driveway.

FINDINGS & REASONS FOR DECISION

[31] Accessory buildings are a discretionary use in the Residential Two District, in accordance with section 50 of the *Land Use Bylaw*.

[32] 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*.

[33] The Board reviewed all evidence and arguments, written and oral, submitted by the parties and focused 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.

[34] The Board acknowledges that the subdivision that created the Lands triggered the non-compliance.

[35] The Board heard evidence that the Lands are well screened and the accessory buildings are not likely to be seen by the neighbouring properties. The Owners use the accessory buildings for storage. There is no negative impact to the neighbours and a neighbor gave their support of the application.

[36] 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

[37] 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 May 7, 2019.

“ Dan Henn “

D. Henn, Councillor, Vice-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)