

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

Board Order No.: 2019-SDAB-021

File No.: 03908037; PRDP20190199

Appeal by: David Bopp

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 13, 2019. In this decision the Development Authority refused a development permit for an accessory dwelling unit (suite within a building) that was constructed without permits at 54101 Township Road 232 (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 an accessory dwelling unit (suite within a building) is approved on the subject land, in accordance with the site plan and details provided with the application.

- 2) That the maximum habitable floor area for the accessory dwelling (suite within a building) is relaxed from 110.00 sq. m (1,184.00 sq. ft.) to 140.85 sq. m (1,516.11 sq. ft.).

Prior to Issuance:

- 3) That prior to issuance of this permit, confirmation from a qualified professional shall be provided that the new or expanded private sewage treatment system has sufficient capacity to service the accessory dwelling unit, as per County Policy 411 "Residential Water and Sewer Requirements".

Permanent:

- 4) That the accessory dwelling unit (suite within a building) shall have a distinct county address to facilitate accurate emergency response.
- 5) That there shall be a minimum of one parking stall maintained on-site at all times dedicated to the accessory dwelling unit (suite within a building).
- 6) That there shall be adequate water servicing provided for the accessory dwelling unit (suite within a building) and it is the Applicant's/Owner's responsibility to provide water quantity in accordance with the recommendations found in Module 2 of the document "Water Wells That Last for Generations" published by Agriculture and Agri-Food Canada, Alberta Environment, Alberta Agriculture and Food.
- 7) That there shall be adequate sanitary sewer servicing provided for the accessory dwelling unit (suite within a building) and that the Applicant/Owner is responsible for obtaining all permits for the new or expanded private sewage treatment system.
- 8) 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 and includes the following:

Advisory:

- 9) That a building permit shall be obtained through Building Services for the existing accessory dwelling unit (suite within a building) using the Accessory Dwelling Unit Checklist.
- 10) That any other Federal, Provincial or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant/Owner.
- 11) That if this Development Permit is not issued by October 31, 2019 or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

BACKGROUND

[4] On January 18, 2019, David Bopp and Janet Summerscales submitted a development permit application for an accessory dwelling unit in an existing accessory building.

[5] The Lands are located at NE-08-23-05-W5M, located approximately 0.41 kilometres west of Range Road 54 and on the south side of Township Road 232. The Lands are approximately 2.02 hectares (4.99 acres) in area and are owned by David Bopp and Janet Summerscales (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 13, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) The habitable floor area for the accessory dwelling unit (suite within a building) exceeds the maximum permitted habitable floor area as defined in section 28.4 of *Land Use Bylaw*.

[8] On April 1, 2019, David Bopp (the Appellant) appealed the Development Authority's decision. The Notice of Hearing was circulated to 17 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) Lisa Mrozek, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority; and
- (3) David Bopp, the Appellant.

[10] The Appellant included seven letters in support of the appeal from neighbours with his Notice of Appeal.

[11] The Board did not receive any letters in opposition to the appeal.

Development Authority's Submissions

[12] The development permit application on appeal is for an accessory dwelling unit, being a suite within a building, and the relaxation of the maximum permitted habitable floor area. The accessory dwelling unit was constructed without permits in the upper floor of an existing accessory building. The accessory building is situated at the rear of the Lands and is screened with a large amount of mature trees.

[13] The Appellant proposed to bring the accessory dwelling unit into compliance and complete some interior and exterior modifications.

[14] As per section 28.4(d)(ii) of the *Land Use Bylaw*, the maximum allowable habitable floor area for an accessory dwelling unit is 110.00 square metres. The floor area of the existing dwelling unit is 140.85 square metres. This is variance of 28.05%. The requested variance

exceeds the discretion of the Development Authority under section 12 of the *Land Use Bylaw*. The development permit application was therefore refused.

[15] All other aspects of the accessory dwelling unit are consistent with the Land Use Bylaw regulations.

Appellant's Submissions

[16] The Appellant is looking for an exception to the square footage allowed under the *Land Use Bylaw*.

[17] The existing accessory dwelling unit was built on the Lands in the early 1990s. It was meant to be a shop with a small bathroom and kitchen. The previous owners lived there on-and-off while they built the primary home on the Lands. The building was built into a hill so it is a walkout on one side. Currently, the north side access is for only the shop area.

[18] The Appellant wants to bring the accessory dwelling unit into compliance so his mother-in-law can live there in the future. Minimal changes to the exterior building are being proposed, including adding windows for legal egress and improved lighting. Another proposed change is to install a sliding glass door on the other side of the building from the current door so there are two access points into the accessory dwelling unit. Inside the building, the Appellant proposed creating a two-bedroom apartment.

[19] The Lands are located in a heavily wooded area of West Bragg Creek. The forest is so dense that the neighbours cannot see into the Lands and the Appellant cannot see the neighbours. As a result, there is little impact to the neighbours.

[20] The Appellant provided letters of support from his neighbours to the Board. The Appellant moved on to the Lands less than six months ago. He only approached the neighbours he knew for the letters of support, all of which were received.

[21] Without approval for the additional square footage, the proposed floorplan would have to change to make the second bedroom a space for storage. The second bedroom is wanted so his mother-in-law can have guests. The existing garage within the building is a large single car garage and, therefore, the building already has sufficient storage.

Development Authority's Rebuttal

[22] Regarding the changes to the exterior of the building, the Board could ask a prior-to-release condition for revised drawings to show proposed windows and doors. Such a condition would identify where the windows, doors, and egresses would be. This speaks to the character of the building and the view for the windows.

Appellant's Rebuttal

[23] The Appellant had offered the drawings to the Development Authority.

[24] The drawings showing the exterior changes will be submitted as part of the building permit applications. The Appellant has been speaking to Building Services about the plans and the need to renovate. The Appellant has already sought out the necessary trades to complete the renovations, such as a plumber and electrician.

[25] The existing bathroom space measures four feet by four feet. The Appellant personally wouldn't want to live in the accessory dwelling unit and plans to start from scratch with the interior.

FINDINGS & REASONS FOR DECISION

[26] An accessory dwelling unit is a discretionary use in the Residential Two District, in accordance with sections 28 and 50 of the *Land Use Bylaw*.

[27] 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*.

[28] 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.

[29] The Board finds that the proposed development plans match the underlying footprint of the existing building and do not significantly change the character or use of the building. The Lands are very well screened and there is support in the community for the changes. The proposed development likely has no negative impact on the neighbours.

[30] The proposed accessory dwelling unit meets the height and setback requirements in the *Land Use Bylaw*.

[31] 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

[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 May 7, 2019.

“ Dan Henn “

Dan 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 (44 pages)