

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

Board Order No.: 2019-SDAB-023
File No.: 05629011; PRDP20183946
Appeal by: John and Janina Boguslawski
Appeal Against: Development Authority of Rocky View County
Hearing Date: 2019 May 15
Decision Date: 2019 May 30
Board Members: D. Kochan, Chair
H. George
I. Galbraith
D. Henn
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 April 11, 2019. In this decision the Development Authority refused a development permit at 24137 Aspen Drive (the Lands).

[2] Upon notice being given, this appeal was heard on May 15, 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 in part. A development permit shall be issued subject to the following conditions:

Prior-to-Issuance

- 1) That the four (4) existing accessory buildings (sea-can with an approximate area of 14.71 (158.37 ft), two (2) sheds, and coverall) must be removed from the subject property no later than June 27, 2019.

- 2) That the subject lands must be cleaned and tidied to the satisfaction of the Development Authority no later than June 27, 2019.

Description:

- 3) That the three (3) existing accessory buildings (two (2) sea-cans each with an approximate area of 29.67 m² (319.37 ft²) and the detached garage) may remain on the subject property in accordance with the amended site plan that was presented at the May 15, 2019 Subdivision and Development Appeal Board hearing, prepared by J.K. Engineering Ltd., dated September 24, 2018, and the conditions of this development permit.
- 4) That the maximum building area of the existing accessory building (detached garage) is relaxed from 120.00 m² (1,291.67 ft²) to 302.61 m² (3,257.27 ft²).
- 5) That the minimum side yard setback to the existing accessory building (detached garage) is relaxed from 3.00 m (9.84 ft) to 1.48 m (4.86 ft.).
- 6) That the total building area for all accessory buildings is relaxed from 120.00 m² (1,291.67 ft²) to 179.37 m² (3,896.01 ft²).
- 7) That the maximum number of accessory buildings is relaxed from two (2) to three (3).

Permanent:

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

Advisory:

- 10) That an as-built Building Permit for the existing accessory building (detached garage) shall be obtained.
- 11) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.

BACKGROUND

[4] On September 28, 2018, Jan Korzeniowski (the Applicant) submitted a development permit application to bring six existing accessory buildings into compliance through relaxations, due to enforcement action.

[5] The Lands are located at NW-29-25-02-W5M, Located approximately 0.80 kilometres (1/2 mile) east of Range Road 25 on the south side of Aspen Drive. The Lands are approximately 0.81 hectares (2.00 acres) in area and is owned by John and Janina Boguslawski.

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

[7] On April 11, 2019, the Development Authority refused a development permit on the following grounds:

- (1) The building area of an existing accessory building (garage) exceeds the maximum building area allowed for an accessory building as defined in section 48.3 of *Land Use Bylaw*.
- (2) The side yard setback of the existing accessory building (garage) does not meet the minimum side yard setback from a parcel to a building as defined in section 48.5(c) of *Land Use Bylaw*.
- (3) The existing total building area of all accessory buildings exceeds the total building area allowed for all accessory buildings as defined in section 48.9 of *Land Use Bylaw*.
- (4) The existing number of accessory buildings exceeds the total number of accessory buildings allowed as defined in section 48.10 of *Land Use Bylaw*.

[1] On May 2, 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

[2] The Board heard verbal submissions from:

- (1) Sandra Khouri, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (3) John Boguslawski, the Appellant;
- (4) Joan Clark, owner of 24133 Aspen Drive, in opposition; and
- (5) Margit McGarth, owner of 24160 Aspen Drive, in opposition.

[3] The Board received 15 letters in support of the appeal from:

- (1) Keri Drennan, owner of 24188 Aspen Drive;
- (2) Armida Benacchio, owner of 24179 Aspen Drive;
- (3) Joelle Lemmer, owner of 24125 Aspen Drive;
- (4) Agnes V. Bulmer, owner of 24122 Aspen Drive;
- (5) Les Neumann, owner of 24199 Aspen Drive;

- (6) Tony Zuczek, owner of 24176 Aspen Drive;
- (7) Barb Lucy-Hawkes, owner of 24236 Aspen Drive;
- (8) Michael Verbisky, owner of NE-29-25-02-W5M, Block 1, Plan 7510049;
- (9) John Oliverio, owner of 24215 and 24197 Aspen Drive;
- (10) Thomas Lemmer, owner of 24121 Aspen Drive;
- (11) Taron Dhanda, for 24066 Aspen Drive;
- (12) Ray Smith, for 24077 Aspen Drive;
- (13) Michael Hibberd, owner of 24226 Aspen Drive;
- (14) John Selinger, owner of 24194 Aspen Drive; and
- (15) Stanley Lui, owner of NW-29-25-02-W5M, Block 4 Balance, Plan 7410167, and Lot 1 Block 3 Plan 9010703.

[4] The Board also received letters of support from:

- (1) Kevin (last name illegible) for 24040 Aspen Drive. However, there is no municipal address of 24040 Aspen Drive; and
- (2) A representative of 24159 Aspen Drive, being the Lands. The representative's name is illegible.

[5] The Board received one letter in opposition to the appeal from Margit McGarth, owner of 24160 Aspen Drive.

Development Authority's Submissions

[6] This development permit application is the result of enforcement file.

[7] The Lands are located off of Aspen Drive, within the Bearspaw Area Structure plan, and west of the City of Calgary. The Lands are developed with a dwelling, two sea-cans, a detached garage and one coverall building. Under the *Land Use Bylaw*, sea-cans are considered to be accessory buildings.

[8] The existing number of accessory buildings exceeds the total number of accessory buildings allowed for Residential One District properties. The maximum total number of accessory buildings is two and the current number of accessory buildings is six. This is a variance of 200%.

[9] The total building area of all existing accessory buildings exceeds the total building area allowed for all accessory buildings. The allowed total building area for all accessory buildings is 120.00 metres square and the existing total building area for all accessory buildings is 372.27 metres square. This is a variance of 210%.

[10] The building area of the detached garage exceeds the maximum building area allowed for an accessory building. The maximum building area allowed is 120.00 metres squared and the proposed building area is 302.61 metres square. This is a variance of approximately 150%.

[11] The side yard setback of the existing accessory building, being the detached garage, does not meet the minimum side yard setback from a parcel to a building. The required setback is 3.00 metres and the proposed setback is 1.48 metres. This is a variance of 51%.

[12] The Development Authority does not have the discretion to permit these requested variances.

[13] The representatives for the Development Authority had not visited the Lands. However, from Khouri's experience, Aspen Drive is well screened with mature trees.

[14] The Lands have two access points. One access point is in the northeast corner of the Lands and gives access to Aspen Drive. The second access point is at the west of the Lands through the adjacent parcel.

Appellant's Submissions

[15] The Lands contain a single-family house and a garage. The garage was built for three small cars but cannot fit two large cars and van. The garage cannot accommodate the Appellant's motorhome, smaller equipment, and materials. The Appellant also has lawn maintenance equipment, including a lawnmower, snow blower, and earth moving equipment. The Appellant also owns the 13-acre parcel south of the garage. He intends to develop this area into two-acre lots.

[16] The Appellant currently lives in Arbor Lake but plans to move back to the Lands. A family of three adults and three children is now renting the single-family household. The tenants use the vinyl sheds to store personal possessions, such as the children's bicycles.

[17] The Appellant built the detached garage because he wanted one larger building that could house all his vehicles and equipment. The detached garage is screened west, east, and north sides of the Lands. He has put a lot of effort into keeping the Lands in good condition and esthetically pleasing.

[18] The Appellant spoke with his neighbours and he believes he received support from 18 residents along Aspen Drive. He clarified that the letter states a proposed garage but he is referring to the existing detached garage.

[19] The Appellant is willing to remove the smaller sea-can, the two vinyl shacks, and the greenhouse (coverall). The vinyl shacks are 15 years old and cannot be moved without damaging them. The greenhouse was built for a current tenant in the house but she recently had a child and is not able to use it now. However, he wants to keep two 8x40 sea-cans. These containers are full of materials and tools.

Joan Clark Submissions

[20] Joan Clark lives directly to the east of the Lands. She built her home on the property 17 years ago. Clark spoke in opposition of the appeal.

[21] All of the Appellant's buildings and personal possessions are located on the top acre of the Lands. Clark can see the plastic coverall from her property. The detached garage is much larger than his current three-car garage. She can see the detached garage from her yard and Aspen Drive.

[22] There are ongoing issues with the Lands. There is always a lot of things left on the Lands, as well as lots of activity and dumping. Along the second entrance to the Lands, there is a wall of trees that have been ground up. There is now concrete and asphalt. Trucks are going into the back of the field. There are also horses on the remainder of the Lands.

[23] The trees the Appellant did put in are too close to her property. The drop off is problem. The trees include coniferous and deciduous trees.

[24] The current condition of the Lands is untidy and is detriment to selling her house.

Margit McGarth's Submissions

[25] Margit McGarth recently moved to the area and lives directly to the northeast of the Lands. She spoke in opposition to the appeal.

[26] McGarth had previously signed a letter in support of the appeal. Upon learning more of the proposed development, she withdrew her letter of support and submitted a letter in opposition.

[27] McGarth can see the structures from her property and Aspen Drive. Specifically, she can see the detached garage's roofline above the coniferous trees. Occasionally, there is a tarp flapping that she can also see. She believes that it will likely be screened better when the trees grow.

Development Authority's Rebuttal

[28] There are maximum building areas for buildings on a property but no floor to area ratios in the *Land Use Bylaw*. This issue is managed through maximum permitted building areas and number of building areas limits.

[29] A building permit has not been applied for the detached garage. Most accessory buildings do require a building permit, therefore, advising that one is required is a standard condition in applying for a development permit.

[30] There are no comments from the inspector about the state of the Lands at the time of the inspection. The photos do show the condition of the Lands. Enforcement issues are not within the Board's purview.

Appellant's Rebuttal

[31] The Appellant wants to be a good neighbor and is trying to clean the Lands up as much as possible. He is plans to further tidy up the Lands now that the detached garage is built. He estimates it may take two to four weeks to fully clean up the Lands.

[32] The rental market is very bad right now. He would like to keep some of the accessory buildings for his tenants to use.

[33] The Appellant believes he has a building permit for the two larger sea-cans from about ten years ago. Two larger sea-cans are used to house materials and tools, some of which were used to build the garage. He also stores smaller appliances and tools there.

[34] Right now, the detached garage's roof is on posts. It is covered with metal walls that are to be painted dark green. There is no heating inside and there are no garage doors on it.

FINDINGS & REASONS FOR DECISION

[35] Accessory buildings are a discretionary use in Residential One District, in accordance with section 48 of the *Land Use Bylaw*. 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*.

[36] 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.

[37] The Board finds that there are seven accessory buildings on the Lands:

- (1) Detached garage ("Detached Garage") with an area of 302.62 metres squared;
- (2) Sea-can (Sea-can #1) with an area of 29.67 metres squared;
- (3) Sea-can (Sea-can #2) with an area of 29.67 metres squared;
- (4) Sea-can (Sea-can #3) with an area of 14.71 metres squared;
- (5) Shed (Shed #1) with an area of 5.95 metres squared;
- (6) Shed (Shed #2) with an area of 5.95 metres squared; and
- (7) Coverall building (Greenhouse) with an area of 13.38 metres squared.

[38] The Board heard evidence that Sea-can #1 and Sea-can #2 have building permits. The Garage and Sea-can #3 do not have building permits.

[39] The Board finds that the Appellant stated that he:

- (1) wants to keep the Detached Garage, Sea-can #1 and Sea-can #2;
- (2) is willing to remove Sea-can #3 as he plans to sell it;
- (3) would prefer to keep Shed #1 and Shed #2 for his tenant's convenience but is willing to remove them; and
- (4) is willing to remove the Greenhouse as it is not being used.

[40] The Board considered the letters of support against the submissions in opposition of the appeal. The Board acknowledges the opposition submissions but accepts that there is a great

deal of purported support for the development on the Lands. The Lands also appear to be well screened which reduces the view of the accessory buildings.

[41] The Board heard and saw evidence that the Lands are untidy. The Board finds this evidence compelling and finds that the keeping the Lands tidy is an important factor in its decision.

[42] The Board finds that the Appellant needs the larger accessory buildings, namely the Detached Garage, Sea-can #1 and Sea-Can #2, to store and secure personal property, including equipment and vehicles. This in turn helps keep the Lands tidy. The smaller accessory buildings, being Sea-can #3, Shed #1, Shed #2, and the Greenhouse, are underutilized, unsightly, and redundant in consideration of the larger accessory buildings.

[43] Given the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that the Detached Garage, Sea-can #1, and Sea-can #2 at their existing locations 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*.

[44] However, the Board finds that Sea-can #3, Shed #1, Shed #2, and the Greenhouse unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. Therefore, no development permit shall be issued for Sea-can #3, Shed #1, Shed #2, and the Greenhouse and these buildings must be removed from the Lands.

CONCLUSION

[45] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is overturned in part. A development permit shall be issued subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on May 30, 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 (20 pages)
2.	Development Authority's presentation to the Board (10 slides)
3.	Letters of Support provided by Appellant
4.	Appellant's Maps showing letters of support provided by the Appellant
5.	Appellant's photos presented to the Board
6.	Amended Site Plan provided by Appellant, prepared by J.K. Engineering Ltd., dated September 24, 2018 (1 page)