

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

Board Order No.: 2019-SDAB-024

File No.: 04312120; PRDP20190975

Appeal by: Ernest and Tammy Hird

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 June 5

Decision Date: 2019 June 20

Board Members: D. Kochan, Chair
D. Henn
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 May 7, 2019. In this decision the Development Authority refused a development permit for the construction of an accessory building (oversize garage), the relaxation of the maximum building area and rear yard setback requirement for the oversize garage, and the relaxation of the total building area for all accessory buildings at 208 East Ridge Bay (the Lands).

[2] Upon notice being given, this appeal was heard on June 5, 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 building (oversize garage/shop) may be constructed on the subject land in accordance with the site plan and drawings provided with the application.
2. That the rear yard setback requirement for the accessory building (oversize garage/shop) is relaxed **from 7.00 metres (22.96 feet) to 6.55 metres (21.49 feet)**.
3. That the maximum building area for the accessory building (oversized garage/shop) is relaxed **from 120.00 square metres (1,291.67 square feet) to 234.12 square metres (2,520.05 square feet)**.
4. That the total building area for all accessory buildings is relaxed **from 120.00 square metres (1,291.67 square feet) to 283.23 square metres (3,048.66 square feet)**.

Prior to Release:

5. The Applicant/Owner shall, to the satisfaction of the Development Authority, submit Building Elevations of all sides of the accessory building (oversize garage/shop) to Rocky View County Planning and Development Services. The Building Elevations shall address the following to the satisfaction of the Development Authority:
 - a. Building height;
 - b. Building massing; and
 - c. Building exterior façade treatment.

Permanent:

6. That the accessory building (oversize garage/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.
7. That the accessory building (oversize garage/shop) shall not be used for residential occupancy at any time.
8. 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.

9. That if this Development Permit is not issued by **November 30, 2019** or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

Advisory:

10. That the Applicant/Owner shall contact County Road Operations with haul details for materials and equipment needed during construction/site development to confirm if Road Use Agreements will be required for any hauling along the County road system and to confirm the presence of County road ban restrictions.
11. That any required building permits and/or sub-trade permits for the accessory building (oversize garage/shop) shall be obtained through Building Services.
12. That any other federal, provincial or County permits, approvals, and/or compliances, are the sole responsibility of the Applicants/Owners.

BACKGROUND

[4] On April 2, 2019, Ernest and Tammy Hird (the Appellants) submitted a development permit application for the construction of an accessory building.

[5] The Lands are located at SE-12-24-28-W4M, approximately 0.81 kilometres (1/2 mile) west of Highway 791 and 0.41 kilometres (1/4 mile) south of Township Road 241A. The Lands are approximately 0.98 hectares (2.02 acres) in area and are owned by Ernest and Tammy Hird.

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

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

- 1) The size of the proposed accessory building (oversize garage/shop) exceeds the discretionary area under Section 48.3 of Land Use Bylaw C-4841-97.
Discretionary: 120.00 square metres (1,291.67 square feet); Proposed: 234.12 square metres (2,520.05 square feet);
- 2) The rear yard setback proposed for the accessory building (oversize garage/shop) does not meet the minimum requirement under Section 48.5 of Land Use Bylaw C-4841-97.
Required: 7.00 metres (22.96 feet); Proposed: 6.55 metres (21.49 feet); and
- 3) That the total building area of the proposed and existing accessory building exceeds the permitted area under Section 48.9 of Land Use Bylaw C-4841-97.
Permitted: 120.00 square metres (1,291.67 square feet); Proposed: 283.23 square metres (3,048.66 square feet).

[8] On May 9, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 34 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, Development Assistant, for the Development Authority; and
 - (2) Ernest Hird, the Appellant.

- [10] The Board received two letters in support of the appeal from:
- (1) Henry and Karen Faucher of 204 East Ridge Bay; and
 - (2) Ken and Terrie Forrester of 212 East Ridge Bay.

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

Development Authority's Submissions

[12] An Accessory Building is discretionary on a parcel if the building is between 80 and 120 square metres in size.

[13] The proposed building is 234.12 square meters in size.

[14] The proposed building requires variance of 95.10%. This is over the discretionary relaxation ability of the Development Authority.

[15] The rear yard set back requires variance of 6.43% and is included due to other reasons for refusal.

[16] The Development Authority has no discretion over total building area relaxation.

[17] The setback from the drainage right-of-way is adequate.

[18] Screening is not a concern based on the amount of trees on site.

[19] The numbers should be reversed on page 238 of the agenda, being the site plan. 102 feet versus 95 feet should be reversed.

[20] The site plan from Applicant should be used.

Appellant's Submissions

[21] The relaxation request is in order to not uproot any trees in the yard.

[22] The storage is needed for lawn equipment, move work equipment (scaffolding) that is currently under tarps into garage.

[23] The Appellant wants to be a good neighbor, to clean up the yard and secure items.

Development Authority's Rebuttal

[24] The Development Authority had no rebuttal.

Appellant's Rebuttal

[25] The Appellant had no rebuttal.

FINDINGS & REASONS FOR DECISION

[26] An Accessory Building is a discretionary use in the Residential One District, in accordance with section 48 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 acknowledges that the proposed Accessory Building will allow for the storage of recreational vehicles and materials needed to support the Appellants' hobby activities. The proposed building will also provide security for the aforementioned belongings.

[30] The Board notes that there is no opposition from the neighbouring parcels.

[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 June 20, 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 (22 pages)
2.	Property photos submitted by the Appellant (16 photos)
3.	Letter from Ken and Terrie Forrester