

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

Board Order No.: 2019-SDAB-025

File No.: 05806003 / 05806004; PRDP20191251

Appeal by: Alvin Kumlin

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 13, 2019. In this decision the Development Authority refused a development permit for an existing single detached dwelling, the construction of an addition, and the relaxation of the minimum rear yard setback at 45050 Township Road 250 (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 construction of an addition to the existing dwelling may take place on the subject land, in general accordance with the approved site plan and conditions of this permit.

Permanent:

2. That the Applicant/Owner shall take effective measures to control dust in the area so that dust originating therein shall not cause annoyance or become a nuisance to adjoining property owners and others in the vicinity of the area.
3. That there shall be no more than 1.00 m (3.28 ft.) of fill and/or topsoil placed adjacent to or within 15.00 m (49.21 ft.) of the proposed dwelling, single detached that is used to establish approved final grades unless a separate Development Permit has been issued for additional fill and topsoil.
4. That the Applicant/Owner shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration.
5. That no topsoil shall be removed from the subject property.

Advisory:

6. That the Applicant/Owner shall contact County Road Operations to determine if any Road Data permits are required for the mobilization or demobilization of construction equipment and/or the hauling of clean fill to the subject site using the County road system for the proposed dwelling, single detached.
7. That the site shall remain free of restricted and/or noxious weeds.
8. That during construction, the County's Noise Control Bylaw C-5772-2003 shall be adhered to at all times.
9. That during construction, all construction and building materials shall be maintained onsite 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.
10. That a Building Permit shall be obtained, through Building Services prior to any construction taking place, using the Single Family Dwelling checklist.
11. That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.
12. 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.
13. The respective owners of SE and SW-06-25-04-W5M should be strongly advised to enter into an encroachment agreement, such that any future purchaser of the SW-06-25-04-W05M would be legally bound to accept the encroachment of the residence.

BACKGROUND

[4] On April 23, 2019, Alvin Kumlin and Robyn Kurbel submitted a development permit application for an addition onto a one storey house that was built on the property line of the two parcels.

[5] The Lands are located at SW & SE-06-25-04-W5M, located approximately 0.5 miles north of Highway 1 and west of Jumping Pond Road. The Lands are approximately 129.08 hectares (318.97 acres) in area and are owned by Alvin Kumlin and Robyn Kurbel.

[6] The Lands' land use designation is Ranch and Farm, which is regulated in section 43 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On May 13, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) The rear yard setback for the dwelling, single detached (existing) on SE-06-25-04-W05M does not meet the minimum rear yard setback requirement, as defined in Section 43.12 of *Land Use Bylaw C-4841-97*. Permitted – 15.00 m (49.21 ft.); Proposed – 0.00 m (0.00 ft.)
- (2) The rear yard setback for the dwelling, single detached (existing) on SW-06-25-04-W05M does not meet the minimum rear yard setback requirement, as defined in Section 43.12 of *Land Use Bylaw C-4841-97*. Permitted – 15.00 m (49.21 ft.); Proposed – 0.00 m (0.00 ft.)

[8] On May 13, 2019, Alvin Kumlin appealed the Development Authority's decision. The Notice of Hearing was circulated to 8 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;
- (2) Sean McLean, Planning and Development Supervisor, for the Development Authority;
- (3) Alvin Kumlin, the Appellant; and
- (4) Sheri Copithorne-Barnes, in support of the development.

[10] The Board received no letters in support of the appeal.

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

Development Authority's Submissions

- [12] The house over the property line was built in 1982.
- [13] No subdivision has happened on the parcels.
- [14] The house came after parcel land was created.
- [15] An easement cannot be created to include the house on both properties. They can apply for a boundary adjustment. An encroachment can be registered to title in perpetuity.
- [16] A boundary adjustment is the best course of action, encroachment agreements aren't as clean cut.
- [17] A subdivision application must be done for a boundary adjustment, must be approved by subdivision authority.
- [18] A prior-to-issuance condition can be added for an easement or encroachment.
- [19] No legal advice was sought out.
- [20] Setbacks can be zero metres for each parcel as the Development Permit Application contains both parcels.
- [21] The Board can add permanent condition for boundary adjustment.
- [22] There is confusion over Building Services comments. There is, however, no concern with the building being over the property lines.
- [23] Typically, there is no consideration on family ties to a property.

Appellant's Submissions

- [24] The proposed 14x22 addition is to allow for more living space.
- [25] The Lands have a private road.
- [26] The Land has been in family since 1882, great-grandfather homesteaded in 1882.
- [27] Robin Kurbel, daughter of the Appellant, currently resides in the house that straddles the property line.
- [28] The 334sqft is the size of the addition.
- [29] The title for the second quarter has been transferred into the daughter's name for succession planning.
- [30] The Appellants have construction permits for the residence dating from 1982.
- [31] The location of the property line was never an issue with construction of house over property line.

[32] Legal counsel suggested that if they were to sell a quarter that a boundary adjustment would be done then.

Cheri Copithorne-Barnes' Submissions

[33] Cheri Copithorne-Barnes lives at 45053 TWP 250.

[34] The refusal will be a precedent setting decision for the community.

[35] Legal succession planning is a common practice in the transferring of land parcels & ranches.

[36] The Appellants received legal & tax advice to transfer one parcel into the daughter's name, Robin Kurbel; with the adjoining parcel to remain in Alvin Kumlin's name.

Development Authority's Rebuttal

[37] The building built is over an imaginary line. This comes with specific rights and regulatory requirements.

Appellant's Rebuttal

[38] The properties around the area are all similar.

FINDINGS & REASONS FOR DECISION

[39] The addition to the existing house is a discretionary use in the Ranch and Farm district, in accordance with section 43 of the *Land Use Bylaw*.

[40] 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*.

[41] 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.

[42] The Board supports the appeal since the affected property owners of the site (SE and SW-06-25-04-W5M) that the structure is located on have submitted a joint application for the DP. The following analysis rationalizes the decision:

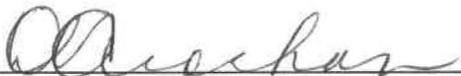
- (1) The term "Site" is defined in the Land Use Bylaw as follows: "SITE means one or more lots or parcel and may include streets, lanes, walkways, and any other land surface upon which development is proposed;" It is clear from the DP Application that in this case the "site" on which development is proposed consists of two titled parcels: the SE 6 and SW 6. That the development is proposed on a site which includes two parcels is consistent with the definition of "site" in the Land Use Bylaw quoted above. That being the case, the County erred in considering that there is a required "setback", as defined in the Land Use Bylaw, between the existing residence and the SW 6. As the definition of setback shows, a setback is a distance between a building and the property line of the building "site". In this case, the building site is both the SE 6 and SW 6. In its Planning & Development Report to the Board, and its original DP Report, the County speaks of the corner of the existing residence being located "within the neighbor's property to the west" and "within the adjacent land to the west". We note that the Land Use Bylaw contains a definition of "Adjacent Land", which is: "ADJACENT LAND means land or a portion of land that is contiguous to the parcel of land that is subject to a development application and/or subdivision application and includes land or a portion of land that would be contiguous if not for a public roadway, primary highway, river or stream; or reserve lot;" As already noted, in this case the DP application is expressly stated to be in respect of both the SE 6 and SW 6. In other words, the SW 6 is not adjacent to the land that is subject to the DP application; it is part of the DP application. Therefore, the County's view that the development will affect "adjacent land" is not correct. Nor is it correct that the SW 6 is a "neighbor's property to the west". To the contrary, the SW 6 is owned by one of the Applicants, Robyn Kurbel. Not only that, she resides in the residence that is sought to be expanded. The owner of the SW 6 is therefore not a neighbour to the Applicant; she is one of the Applicants. Accordingly, the County erred by refusing the DP application on the basis that the Applicants are seeking a variance which is beyond the County's discretion to grant.

[43] 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

[44] 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 (23 pages)
2.	Property photos submitted by the Appellant (15 photos)
3.	Appellant Presentation (11 pages)
4.	Cheri Copithorne-Barnes Letter (2 pages)