

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

Board Order No.: 2019-SDAB-028

File No.: 03913100; PRPD20190667

Appeal by: Martin Kniebel and Juliane Kniebel-Huebner

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 17, 2019. In this decision the Development Authority refused a development permit for an existing accessory building (oversize garage), the construction of an addition, including an accessory dwelling unit (suite within a building), the relaxation to the top of bank setback requirement, the relaxation of the total number of accessory buildings, and the relaxation to the total building area for all accessory buildings at 19 Centre Avenue (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 accessory building (garage), including an accessory dwelling unit (suite within a building) may be constructed in accordance with the site plan and drawings prepared by Rusch Projects, dated May 14, 2019, as submitted with the application, including the following:
 - a. Construction of an addition, 42.55 sq. m (458.00 sq. ft.) in area, to the garage, with a total building area of approximately 69.49 sq. m (748.00 sq. ft.) in size;
 - b. Construction of an accessory dwelling unit, approximately 42.55 sq. m (458.00 sq. ft.) in size; and
 - c. Construction of an addition to the deck, approximately 42.73 sq. m (470.00 sq. ft.) in size.
2. That the top of bank setback requirement is relaxed in accordance with an approved Geotechnical Report, as required in Condition #6.
3. That the maximum number of accessory buildings permitted onsite is relaxed from **two (2) to three (3)**.
4. That the total building area for all accessory buildings is relaxed from **90.00 sq. m (968.75 sq. ft.) to 108.05 sq. m (1,163.00 sq. ft.)**.

Prior to Issuance:

5. That prior to issuance of this permit, the Applicant/Owner shall confirm acceptance or refusal to participate in the Voluntary Recreation Contribution for Community Recreation Funding on the form provided by the County, and that the contribution, if accepted, is \$800, calculated at \$800.00 for each new residential unit.
6. That prior to issuance of this permit, the Applicant/Owner shall submit a Geotechnical Report that includes a Soil Stability Analysis conducted by a qualified professional geotechnical engineer to address the slope on the subject lands as the slope is in excess of 15%, the height of the bank is between 6.00 m and 23.00 m, and the proposed development is within a distance that is two times the height of bank, from the top of the bank, in accordance with the County Servicing Standards.
7. That prior to issuance of this permit, the Applicant/Owner shall submit an Erosion and Sediment Control (ESC) Plan, in accordance with the County Servicing Standards. The plan shall outline ESC measures (i.e. silt fence, stabilization, seeding of topsoil, etc.) to be implemented during the construction of the addition and accessory dwelling unit and in perpetuity as the proposed development is an addition to an existing building and will be constructed more than 2.00 m closer to the center of the watercourse.

Permanent:

8. That if any new Private Sewage Treatment System (PSTS) infrastructure is required, the Applicant/Owner shall be required to obtain all necessary permits for the installation of a new PSTS.
9. 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.
10. That it is the Applicant/Owner's obligation/responsibility to undertake water quality testing in accordance with the Guidelines for Canadian Drinking Water Quality and Alberta Health Services criteria. Should there be any adverse results, or should questions arise concerning the interpretation of the results of the analyses, it will be the obligation/responsibility of the Owner/Applicant to contact the local Public Health Inspector for recommendations/ requirements.
11. That there shall be a minimum of one (1) parking stall maintained on site at all times dedicated to the Accessory Dwelling Unit (Suite within a building).
12. That the Accessory Dwelling Unit (Suite within a building) shall be subordinate to the dwelling, single detached.
13. That it is the Applicant/Owner's responsibility to obtain and display a distinct municipal address in accordance with the County Municipal Addressing Bylaw (Bylaw C-7562-2016), for the proposed development located on the subject site, to facilitate accurate emergency response.
14. 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 subdivision area.
15. That any flood proofing measures shall be followed in accordance with the Alberta Building Code, good engineering practice and recommendations stated in the Bragg Creek Area Structure Plan.
16. That the Applicant/Owner shall ensure that all habitable floor levels are above the 1 in 100 flood level. Any construction below this flood level may require engineered flood proofing measures.

Note: The required flood elevation level is 1299.13m
17. That the existing trees and terrain shall be retained except as required to meet conditions of this permit and any disturbed areas shall be replanted with vegetation similar to existing predevelopment ground cover.

18. That any plan, technical submission, agreement, matter, or understanding submitted and approved as part of the application, in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity including any recommendation of the required Geotechnical Report and Erosion and Sediment Control Plan.

Advisory:

19. That during construction, all construction and building materials shall be maintained on site 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.
20. That a Building Permit shall be obtained through Building Services, prior to any construction taking place and shall include fire protection measures in accordance with the Alberta Building Code.
21. That water conservation measures shall be implemented in the Accessory Dwelling Unit (Suite within a building), such as low-flow toilets, shower heads, and other water conserving devices.
22. That any other government permits, approvals, or compliances are the sole responsibility of the Owner/Applicant.
23. 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 Officer.
24. That if this Development Permit is not issued by **DECEMBER 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 March 5, 2019, Oliver Brown (the Applicant) submitted a development permit application for an addition to be constructed on the second floor of the detached garage for an Accessory Dwelling Unit.

[5] The Lands are located at SE-13-23-05-W5M, located at the southeast junction of Balsam Avenue and Winter Green Road, in the Hamlet of Bragg Creek. The Lands are approximately 0.34 hectares (0.84 acres) in area and are owned by Martin Kniebel and Juliane Kniebel-Huebner.

[6] The Lands' land use designation is Hamlet Residential Single Family District, which is regulated in section 59 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On May 17, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) The proposed accessory dwelling unit exceeds the maximum number of dwellings per lot as per Section 59.6 (c) of Land Use Bylaw C-4841-97. Permitted – one (1); Proposed two (2)

[8] On May 24, 2019, Martin Kniebel and Juliane Kniebel-Huebner (the Appellants) appealed the Development Authority's decision. The Notice of Hearing was circulated to 4 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) Jessica Anderson, Municipal Planner, for the Development Authority;
- (2) Gurbir Nijjar, Municipal Engineer, for the Development Authority; and
- (3) Juliane Kniebel-Huebner, Appellant.

[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 proposed development is considered discretionary use in this district.

[13] A relaxation to the maximum building area, total building area for all accessory buildings, and the total number of accessory buildings is needed.

[14] The Development Authority has no discretion to relax the total building area for all accessory buildings and the total number of accessory buildings.

[15] All other requirements in accordance with the *Land Use Bylaw* have been met for the proposed development.

[16] The Bragg Creek Flood Mitigation Project does not affect this parcel.

[17] The addition will extend past the original building towards the river; therefore, a geotechnical report is needed.

[18] There is a requirement for properties in the Hamlet of Bragg Creek to tie-into the Bragg Creek sewer and water lines by 2020.

Appellant's Submissions

[19] The current building sits about 10 meters above the river on bedrock, this means there is no need to berm on this part of the parcel. This development will extend the current garage, not add an additional building to the property. The addition will extend above the garage by 4.5 square metres. A bathroom and kitchenette are being added in the addition.

[20] The garage and Accessory Dwelling Unit are connected to main building by a catwalk.

[21] The other accessory buildings on the property are a garden shed and the original cabin that was built on the property. This cabin is not useable due to flood damage.

[22] The power and gas for the existing studio come from the main building. The addition is approximately 22 feet x 10 feet of extra space. The additional windows will look onto the property not the street or the neighboring property.

[23] The impact on public and surrounding properties is small. The trees provide adequate screening of the property.

[24] In accordance to the Real Property Report when the land was purchased the garage is part of main building not an additional accessory building.

[25] The original caveat was signed June 5, 1939, this allows for a maximum of two dwellings and any number of accessory buildings.

[26] The catwalk between the two buildings will not change.

[27] Currently the property has a cistern and sewage tank. There is currently no sewer line on Centre Avenue.

[28] There is very limited visibility from neighbor to neighbor in this area.

Development Authority's Rebuttal

[29] None.

Appellant's Rebuttal

[30] None.

FINDINGS & REASONS FOR DECISION

[31] An Accessory Dwelling Unit is a discretionary use in the Hamlet Residential Single Family District, in accordance with section 59 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*.

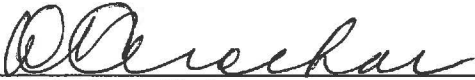
[33] The Board finds that additions are an enhancement to the property and have no effect on the surrounding properties.

- [34] The Board determined that the proposed Accessory Dwelling Unit is well screened.
- [35] The Board finds that setback requirements are adequately addressed.
- [36] The Board also notes that there are no objections from the neighboring properties.
- [37] 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.
- [38] 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

- [39] 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 (36 pages)
2.	Appellant's presentation (8 pages)