

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

Board Order No.: 2019-SDAB-044

File No.: 05335005; PRDP20191266

Appeal by: Jeff and Katherine Bezugley

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 August 28

Decision Date: 2019 September 11

Board Members: D. Kochan, Chair  
D. Henn  
I. Galbraith  
H. George  
W. Metzger

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**DEVELOPMENT APPEAL DECISION**

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**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 July 9, 2019. In this decision the Development Authority conditionally approved a development permit for the construction of an Accessory Dwelling Unit (garden suite), the relaxation of the maximum habitable floor area and the relaxation of the maximum height requirement at 255014 Range Road 282 (the Lands).

[2] Upon notice being given, this appeal was heard on August 28, 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 not be issued.

## BACKGROUND

[4] On April 23, 2019, Devendra Bhandari (the Applicant) submitted a development permit application for an accessory dwelling unit.

[5] The Lands are located at SW-35-25-28-W4M, located on the east side of Range Road 282, approximately 1.61 kilometres (1 mile) north of Secondary Highway 564. The Lands are approximately 8.09 hectares (20 acres) in area and are owned by Rehana Shah.

[6] The Lands' land use designation is Agricultural Holdings, which is regulated in section 46 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On April 23, 2019, the Development Authority conditionally approved to grant a development permit on the following grounds:

### Description:

- (1) That an Accessory Dwelling Unit (Garden Suite), may be permitted on the subject parcel, in general accordance with the approved site plan and application.
- (2) That the maximum habitable floor area for the Accessory Dwelling Unit (Garden Suite) is relaxed from **110.00 sq. m (1,184.00 sq. ft.)** to **120.77 sq. m (1,300.00 sq. ft.)**.
- (3) That the maximum height requirement for the Accessory Dwelling Unit (Garden Suite), as shown on the application drawings, prepared by Yasmita Engineering, (undated), for 255014 Range Road 282, is relaxed from **5.50 m (18.04 ft.)** to **5.51 m (18.08 ft.)**.

### Prior to Issuance:

- (4) That prior to issuance of this permit the Applicant shall confirm acceptance of 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.

### Permanent:

- (5) 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.
- (6) That there shall be only one kitchen facility constructed within the Accessory Dwelling Unit (Garden Suite).
- (7) That there shall be a minimum of one (1) parking stall maintained on-site at all times dedicated to the Accessory Dwelling Unit (Garden Suite).

- (8) That the Accessory Dwelling Unit (Garden Suite) shall be subordinate to the dwelling, single detached.
- (9) That there shall be a distinct municipal address created for each dwelling unit (the dwelling, single detached and the Garden Suite) located on the subject site, to facilitate accurate emergency response.

*Note: The municipal address for the Garden Suite is 255010 RGE RD 282*

- (10) That there shall be adequate water servicing provided for the Accessory Dwelling Unit (Garden Suite) and it is the Applicant/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.
- (11) 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.
- (12) That there shall be adequate sanitary sewer servicing provided for the Accessory Dwelling Unit (Garden Suite).
- (13) That it is the responsibility of the Applicant/Owner to obtain approval from County Road Operations for any new construction, installation or alterations of any driveways/approaches, prior to commencing any work on the driveways/approaches.
- (14) That there shall be no more than 1.00 m (3.28 ft.) of fill/topsoil placed adjacent to or within 15.00 m (49.21 ft.) of the proposed dwelling unit under construction, which is used to establish approved final grades unless a Development Permit has been issued for additional fill and topsoil.

**Advisory:**

- (15) That a Building Permit and subtrade permits for the Accessory Dwelling Unit (Garden Suite) and associated detached garages shall be obtained through Building Services prior to any construction taking place.
- (16) That water conservation measures shall be implemented in the Accessory Dwelling Unit (Garden Suite), such as low-flow toilets, shower heads and other water conserving devices.
- (17) 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.

- (18) That any other government permits, approvals, or compliances are the sole responsibility of the Owner/Applicant.
- (19) That if this Development Permit is not issued by **September 30, 2019**, or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

[8] On April 23, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 15 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) Oksana Newman, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (3) Gurbir Nijjar, Supervisory Engineer, for the Development Authority;
- (4) Jeff Fleischer, Manager Agricultural and Environmental Services;
- (5) Jeff and Katherine Bezugley, the Appellants;
- (6) Catherine Summerscales, in support of the appeal;
- (7) Muhammad (Mike) Shah, in opposition of the appeal;
- (8) Devendra Bhandari, the Applicant, in opposition of the appeal.

[10] The Board received nine letters in support of the appeal from:

- (1) Cathy Summerscales
- (2) Audrey Wathall
- (3) Craig Skubleny & Lisa Case
- (4) Doug & Kim Warden
- (5) Gary & Leigh Ritchie
- (6) Sally Giene
- (7) Bob & Linda Pozniak
- (8) Jim & Colleen Laye

(9) John & Susan DiPalo

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

*Development Authority's Submissions*

[12] There is currently a single family dwelling on the subject lands, the accessory dwelling unit will be in addition to the current dwelling.

[13] The accessory dwelling unit is attached to the two garages on the lands by a covered breezeway. This breezeway can be included as part of the habitable area if the Board wishes.

[14] The garages are not habitable structures and are considered accessory buildings.

[15] There is no maximum amount of buildings allowed on an Agricultural Holdings parcel.

[16] The subject lands also house a Home Based landscaping business.

[17] The lands contain a new septic system installed in 2018; this system does not specify how many habitable rooms this system can accommodate.

[18] There are noxious weeds present on the property; Agricultural Services handles this issue.

[19] The Land Use Bylaw allows for many uses on an Agricultural Holdings parcel; however, who lives on the lands cannot be looked at.

[20] The Development Authority can only control how the land is used not who uses the land.

[21] The Land Use Bylaw allows for one main dwelling and one accessory dwelling unit on the lands. There are no restrictions on the number of people allowed to live within the dwellings.

[22] A septic permit and a building permit are required for the installation of a septic system; the system would be sized when the permit was issued.

[23] A Certificate of Title is required when a development application is submitted to the Development Authority.

[24] Bankruptcy is not a concern to the planning department when assessing an application.

*Appellant's Submissions*

[25] The property is not occupied by the owners it is rented, the main dwelling has been suited and there is a suite over the garage that is occupied.

[26] Eight tandem dump trucks come in and out of the property and are stored there daily. The Appellants were told that there would be one pickup truck and lawnmowers from the landscaping business not tandem dump trucks.

[27] The fence around the property is over height.

- [28] There is a fueling station for the trucks on the back of the property.
- [29] There has been a calcium treatment done to the road outside of the property by the County that the Appellant's suspect is due to increased traffic from the trucks.
- [30] All entrances to the property have lights and cameras making the property resemble a compound.
- [31] There is a second entrance to the property on the south end of the property; this entrance does not have a culvert for the water.
- [32] Enforcement has been called numerous times and has visited the property. In July, officers visited the property and took pictures of the fence, the weeds as well as various other issues.
- [33] The Appellants have lived on their property for seven years and have had various issues with the tenants, including finding over fifty piles of asphalt shingles that were dumped into the backfields.
- [34] There is continual truck traffic to and from the property, the Appellants are unsure of the number of trips per day to and from the property.

*Catherine Summerscales Submissions*

- [35] There are three suites on the property, the main level of the house, the basement suite and a suite above the garage. This information was gathered when Ms. Summerscales spoke with one of the tenants.
- [36] There is an open drainage ditch from the Quonset to the Appellant's property line.
- [37] There is also suspected development in the Quonset on the property. The Quonset has a second floor that was previously used for hay storage.
- [38] A balcony has been added to the Quonset, and a staircase to the upper level of the Quonset.
- [39] The breezeway between the garages has already been constructed and is already in place. This is quite a large structure.
- [40] The owner of the Home Based Business does not live on the property.
- [41] The secondary unpermitted entrance on the south side of the property has recycled asphalt placed on the road.
- [42] There is a serious weed problem on fifteen acres of the lands.
- [43] The property resembles a compound.
- [44] The fence surrounding the property is an aluminum fence, is over height in places, and has a great deal of glare coming from it.

[45] The property owner has shown no respect for the neighbourhood or the bylaws of the County.

[46] It was stated by a tenant that the owner of the property wants to bring in additional income from the property with the addition of the accessory dwelling unit on site.

*Muhammad (Mike) Shah Submissions*

[47] Is speaking on behalf of the owner of the lands, his mother, who is currently in hospital.

[48] Due to the passing of the father in 2018, the property was transferred into his mother's name at that time.

[49] After the passing of the father, the landscaping business fell into disarray and due to this; the owner of the lands had to claim bankruptcy. The lands are being held in trust until September 24 2019.

[50] Once the Accessory Dwelling Unit is complete, there will be three generations of the Shah family living on the property, there are 19 people in the family.

[51] Development Permits can be applied for during bankruptcy but no changes can be made to the property until the bankruptcy trustee no longer holds the property.

[52] The Accessory Dwelling Unit (garden suite) is a permitted use in this district.

[53] Ms. Summerscales was trespassing when she came on to the property to speak to the tenants'. The garage Ms. Summerscales spoke to the tenants' at is approximately 100 feet away from the entrance to the property.

[54] There is a plan to move the 19-person family onto the property. Mr. Shah and his brother are moving onto the property and the property will continue to be rented until the garden suite is completed and the rest of the family can move onto the property.

[55] There are currently three dump trucks on site that are part of the bankruptcy proceeding; they have to be moved by October 1, 2019. Only one of these trucks will remain after September 24, 2019.

[56] The secondary access has always been on the property and has always been in use; the owner upgraded the road and gate and put lights at the entrance.

[57] A message was left with the County concerning the weeds on the property.

[58] The newly installed septic system can handle up to ten bedrooms.

[59] The flow and capacity of the water from the well on the property is unknown. However, the well can accommodate the new bedrooms proposed in the Accessory Dwelling Unit.

[60] The trench from the Quonset is not being used for grey water or septic runoff.

*Devendra Bhandari Submissions*

- [61] The Applicant is willing to add increased capacity to the septic system if needed.
- [62] The accessory dwelling unit is needed for space to house the entire family on the property.
- [63] The Applicant is willing to make changes to the accessory dwelling unit to make it work in order to be issued the development permit.
- [64] The Applicant does not see any issues in continuing with the approval for the development permit, as the building will be used for the property owner and their families.

*Appellant's Rebuttal*

- [65] The Appellants have lived on their property for seven years. In those seven years, there has been no evidence of the property owner or the family living on the lands.
- [66] When the Appellants moved onto their property they spoke with and dealt with the late property owner, he stated that the property was a rental property.
- [67] The Appellants are reluctant to believe that the increased space of the accessory dwelling unit will be used for the owner and their families.
- [68] The Home Based Business was a lawn and garden landscaping business not tractor-trailer units coming to and from the property.

*Development Authority's Closing Comments*

- [69] One parking stall is required for the accessory dwelling unit as per the conditions, the Board can adjust this if they see fit.
- [70] The main dwelling is 1300 square feet, the two garages are 576 square feet each, and the breezeway is 520 square feet.
- [71] There were two 2000-gallon septic tanks installed with the new septic system. This permit was deemed closed by the Safety Codes officer.

*Appellant's Closing Comments*

- [72] None.



## FINDINGS & REASONS FOR DECISION

[73] An Accessory Dwelling Unity is a permitted use in the Agricultural Holdings district, in accordance with section 46 of the *Land Use Bylaw*.

[74] 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*.

[75] 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.

[76] The Board finds that there is a concern that the development permit application was incomplete and contained material misstatements about the ownership of the property and the ability of the applicant to act on the owner's behalf.


[77] The Board finds that they do not have authority to make a decision that would authorize development on the property. Rehana Shah does not have any rights in the property until she is discharged from bankruptcy. On this basis, Rehana Shah does not have any authority to deal with the property, including applying for a development permit.

[78] The Board finds that the proposed development, in accordance with applicable sections of the *Land Use Bylaw* and section 687 of the *Municipal Government Act*, does not comply with the land use policies of the current *Land Use Bylaw* and, if approved, would unduly interfere with the amenities of the neighbourhood, and would materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land.

## CONCLUSION

[79] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is revoked. A development permit shall not be issued.

Dated at Rocky View County, in the Province of Alberta on September 11, 2019.



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Don Kochan, Chair  
Subdivision and Development Appeal Board

**EXHIBIT LIST**

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

<b>NO.</b>	<b>ITEM</b>
1.	Development Authority's Report to the Board (90 pages)
2.	Development Authority's Presentation to the Board (11 pages)
3.	Petition in support of Appeal (3 pages)
4.	Property photos submitted by Appellant (2 photos)
5.	Catherine Summerscales Letter and Presentation (7 pages)
6.	Muhammad (Mike) Shah Presentation to the Board (90 pages)
7.	Septic Inspection Report (1 page)
8.	Court decision submitted by the Development Authority (15 pages)