

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

Board Order No.: 2019-SDAB-054
File No.: 04724062; PRDP20193110

Appeal by: Paul and Joanne Gimson
Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 October 30
Decision Date: 2019 November 13

Board Members: D. Kochan, Chair
K. Hanson
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 October 16, 2019. In this decision, the Development Authority refused a development permit for an existing accessory building (garage) and the relaxation of the minimum side yard setback requirement at 64 Rosewood Drive (the Lands).

[2] Upon notice being given, this appeal was heard on October 30, 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 (garage [existing]) may remain on the subject land in general accordance with the submitted Real Property Report, as prepared by Arc Surveys, File #191872; dated July 23, 2019 and the submitted application.
 - (a) That the minimum side yard setback requirement is relaxed from **3.00 m (9.84 ft.) to 0.53 m (1.73 ft.)**.

Permanent:

- (2) That the accessory building (garage [existing]) shall not be used for commercial purposes at any time, except for a Home-Based Business, Type I.
- (3) That the accessory building (garage [existing]) shall not be used for residential occupancy purposes at any time.

Advisory:

- (4) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner.

BACKGROUND

[4] On August 30, 2019, Paul Gimson (the Owner) submitted a development permit application for the relaxation of the building setback from 0.61 m to 0.03 m.

[5] The Lands are located at SE-24-24-03-W5M, located approximately 0.41 kilometres (1/4 mile) north of Lower Springbank Road and on the west side of Range Road 30. The Lands are approximately 0.81 hectares (2.00 acres) in area and are owned by Paul and Joanne Gimson.

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

[7] On October 16, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) That the minimum side yard setback requirement for the accessory building (garage [existing]) exceeds the minimum total as defined in Section 48.5(c)(iv) of Land Use Bylaw C-4841-97.

**Minimum side yard requirement setback – 3.00 m (9.84 ft.);
existing side yard setback– 0.53 m (1.73 ft.)**

[8] On October 17, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 68 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) Christina Lombardo, Development Officer, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (3) Paul Gimson, the Appellant.

[10] The Board received one letter in support of the appeal from:

- (1) Darren Deschamps

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

Development Authority's Submissions

[12] The Development Permit application is the result of a Certificate of Compliance request and would bring the property compliance with the Land Use Bylaw.

[13] Accessory Buildings are both permitted and discretionary in the Residential One District.

[14] There was a previous Board Order in 2008 with regard to this garage; however, a variance cannot be granted off that Board Order, as it needs to be assessed from the Land Use Bylaw.

[15] The Real Property Report measurement was taken from the foundation line of the garage.

Appellant's Submissions

[16] The property line of the parcel is beside the mature trees. The trees are on the neighbouring property; however, the irrigation of the trees is provided from the subject property.

[17] There is an easement in place for the driveway as part of it is on the neighbouring property.

[18] The garage was built to take into account the geographical land grading.

[19] A Real Property Report was requested due to the proposed sale of the property, this report found the 8cm variance in what was approved in the 2008 Board Order.

[20] There is a service corridor between the subject property and the property to the north west of the property.

Appellant's Rebuttal

[21] None.

Development Authority's Closing Comments

[22] None.

Appellant's Closing Comments

[23] None.

FINDINGS & REASONS FOR DECISION

[24] An Accessory Building is both a permitted and discretionary use in the Residential One District, in accordance with section 48 of the *Land Use Bylaw*.

[25] 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*.

[26] The Board acknowledges that this development permit will bring the property into compliance. The Board also notes that the property is well screened and there is support from the adjacent landowners.

[27] 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.

[28] 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

[29] 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 November 13, 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 (27 pages)