

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

Board Order No.: 2020-SDAB-005

File No.: 06428082; PRDP20200443

Appeal by: Fred Wildeman and Luba Kazatchenko

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2020 May 13

Decision Date: 2020 May 28

Board Members: Daniel Henn, Chair
Tricia Fehr
Hazel George
Morrie M. Goetjen
Wendy 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 March 24, 2020. In this decision, the Development Authority approved a development permit application for the construction of accessory buildings (detached garage and replacement of shed), relaxation of the maximum height requirement for accessory building (detached garage), total building area for all accessory buildings, and maximum number of accessory buildings at 236 Stage Coach Lane (Lot 8, Block 7, Plan 0011908; NE-28-26-29-W4M) (the Lands).

[2] Upon notice being given, this appeal was heard electronically on May 13, 2020 in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020.

DECISION

[3] The appeal is allowed in part and the decision of the Development Authority is varied. A development permit shall be issued subject to the following conditions:

Description:

- 1) Construction of the accessory building (oversize garage) and accessory building (shed) may commence on the Lands, in accordance with the submitted application and revised drawings and includes:
 - i. The maximum building area for the accessory building (oversize garage) is relaxed from **80.27 sq. m (864.01 sq. ft.) to 111.11 sq. m. (1,196 sq. ft.);**
 - ii. The maximum total building area for all accessory buildings is relaxed from **120.00 sq. m (1,291.67 sq. ft.) to 133.97 sq. m (1,442 sq. ft.);**
 - iii. The maximum number of accessory buildings is relaxed from **two to three;**
 - iv. The accessory building (oversize garage) shall be moved 16 feet to the northeast from the original proposed location so that the eastern wall of the accessory building (oversize garage) is parallel to the eastern wall of the existing attached garage. A revised Site Plan shall be submitted demonstrating the location of the accessory building (oversize garage), to the satisfaction of the Development Authority; and
 - v. The northern side yard setback for the accessory building (oversize garage) is relaxed from **3.00 m (9.84 ft.) to 2.00 m (6.56 ft.)** if the revised Site Plan determines it is required, as determined by the Development Authority.

Permanent:

- 2) The exterior siding and roofing materials of the accessory buildings shall be similar/cohesive to the existing dwelling, single detached and/or area.
- 3) The accessory buildings shall not be used for commercial purposes at any time, except for a home-based business, type I.
- 4) The accessory buildings shall not be used for residential occupancy purposes at any time.
- 5) Mature 6 foot evergreen landscaping shall be planted along the north wall of the accessory building (oversize garage).
- 6) The windows on the north wall of the accessory building (oversize garage) shall be removed or frosted for privacy.
- 7) 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 accessory buildings under construction in order to establish approved final grades unless a development permit has been issued for additional fill.
- 8) Any plan, technical submission, agreement, or other matter submitted and approved as part of the development permit application, or submitted in response to a prior to issuance condition, shall be implemented and adhered to in perpetuity.

Advisory:

- 9) That during construction of the accessory buildings, 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.
- 10) That the County's Noise Bylaw, C-5772-2003, shall be adhered to at all times.

- 11) That building permits and applicable sub-trade permits shall be obtained through Building Services, prior to any construction taking place.
- 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) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner.

BACKGROUND

[4] On February 25, 2020, Johannes (John) and Heidi Bos (the Applicants) submitted a development permit application for the construction of accessory buildings (detached garage and replacement of shed), relaxation of the maximum height requirement for accessory building (detached garage), total building area for all accessory buildings, and maximum number of accessory buildings on the Lands.

[5] The Lands are located at 236 Stage Coach Lane (Lot 8, Block 7, Plan 0011908; NE-28-26-29-W4M), are 0.82 hectares (2.03 acres) in size, and owned by Johannes and Heidi Bos.

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

[7] On March 24, 2020 the Development Authority approved a development permit application for the construction of accessory buildings (detached garage and replacement of shed), relaxation of the maximum height requirement for accessory building (detached garage), total building area for all accessory buildings, and maximum number of accessory buildings on the Lands.

[8] On April 1, 2020 Fred Wildeman and Luba Kazatchenko submitted an affected party appeal of the Development Authority's decision to approve a development permit application for the construction of accessory buildings (detached garage and replacement of shed), relaxation of the maximum height requirement for accessory building (detached garage), total building area for all accessory buildings, and maximum number of accessory buildings on the Lands. The notice of hearing was circulated to 15 adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 (the Act) and Rocky View County Council policy C-327, *Circulation and Notification Standards*.

[9] Members of the general public were given notice on how to participate in the hearing in accordance with Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020.

[10] On March 31, 2020, the Minister of Municipal Affairs issued Ministerial Order 22/20 which extended the deadline for a subdivision and development board to hear an appeal under section 686 of the Act to October 1, 2020. This was in response to the COVID-19 pandemic.

[11] On April 17, 2020, the Minister of Municipal Affairs issued Ministerial Order 36/22 rescinding Ministerial Order 22/20 and restoring the timeline for a subdivision and development

appeal board to hear an appeal under section 686 of the Act to within 30 days of receipt of the notice of appeal.

[12] Ministerial Order 36/22 included a provision extending the timeline for a subdivision and development appeal board to hear an appeal received between March 25, 2020 and April 17, 2020 by a further 30 days. Therefore the effective deadline for the Board to hear the appeal addressed in this decision was May 17, 2020.

SUMMARY OF EVIDENCE

[13] The Board heard verbal submissions from:

- (1) Sean MacLean, Planning Supervisor, for the Development Authority;
- (2) Fred Wildeman and Luba Kazatchenko, the Appellants;
- (3) Megan S. Hogendoorn, lawyer for the Appellants; and
- (4) John Bos, the Applicant.

[14] The Board received no letters in support or opposition of the appeal.

[15] Appellant Exhibits 1 and 2, and Applicant Exhibit 1 were submitted by the applicable parties to the Clerk of the Board before the hearing date. The exhibits were electronically distributed to the Board Members, Development Authority, Appellants, and Applicant before the hearing for all parties to review. These exhibits were also posted to the Rocky View County website for members of the public watching the hearing's livestream to access.

[16] Appellant Exhibit 3 was distributed electronically by the Clerk of the Board during the hearing with the Chair's permission to the Board Members, Development Authority, Appellants, and Applicant. All parties were given time to review the material and the Applicant verbally indicated they had sufficient time to review the newly submitted material.

[17] At the beginning of the hearing, the Appellants asked the Board Members if they had any affiliation with the Applicant. Each Board Member stated that they had no affiliation with the Applicant.

Development Authority's submissions

[18] The Lands are located within a residentially zoned community.

[19] There is an existing playhouse on the Lands which is considered an accessory building because its canopy area is approximately 5 feet by 6 feet. The playhouse was not included in the original development permit condition as the Applicant did not realize it was considered an accessory building under the *Land Use Bylaw*. The Applicant is now seeking a relaxation from two to three accessory buildings to accommodate the playhouse.

[20] The proposed shed will replace an existing shed on the Lands and will be located in the same location.

[21] The proposed shed and existing playhouse are both permitted uses, however the area and total number of accessory buildings exceed what is permitted in the *Land Use Bylaw* therefore a development permit is required.

[22] The proposed oversize garage is located more than 21 metres (70 feet) from the Appellants' dwelling to the north of the Lands.

Megan Hogendoorn submissions – Lawyer for the Appellants

[23] The Appellants live at 240 Stage Coach Lane which is directly north of the Lands and have lived there since 2011.

[24] The proposed oversize garage would significantly infringe on the use, value, and enjoyment of the Appellants' property, particularly the impact on the Appellants' view of the Calgary and mountains.

[25] The proposed oversize garage is a discretionary use under the *Land Use Bylaw*. The Board is governed by section 12.2 of the *Land Use Bylaw* which states that the Board can only approve a non-conforming development permit application if it does not adversely affect the use, enjoyment, or value of neighbouring parcels of land. The Board can refuse the proposed development because it is a discretionary use.

[26] The Lands fall under the Balzac East Area Structure Plan (BEASP). Section 4.2 of the BEASP under residential land use states that visual impacts from highways and neighbourhoods shall be considered when considering residential development.

[27] The proposed oversize garage will impact the Appellants' view of the mountains and its location and size are uncommon in the area. These types of oversize garages are primarily to the back of the properties in the area.

[28] The Appellants' dwelling was purposefully built to be oriented towards the view of the Calgary and the mountains and very few trees have been planted to maintain the Appellants' view. The proposed oversize garage would be located directly in the Appellants' view. Appellant Exhibit 3 quantifies the negative impact the proposed oversize garage will have on the value of the Appellants' property at \$40,000-\$42,000.

[29] The portion of the Appellants' dwelling that currently has an unimpeded view of Calgary and the mountains include the kitchen, master bedroom, and sun deck. The Appellants' full use and enjoyment of their dwelling would be impeded by the proposed oversize garage.

[30] The images provided in Appellant Exhibit 2 demonstrate that the proposed oversize garage will go in the exact location that impacts the Appellants' view.

[31] The proposed oversize garage is a discretionary use and not fully compliant with the *Land Use Bylaw* and can only be approved by the Board if it is satisfied that the proposed development will not materially interfere with the use, enjoyment, or value of the Appellants'

property. The proposed oversized garage will significantly impact the use, enjoyment, and value of the Appellants' property and should therefore not be approved.

Luba Kazatchenko submissions – The Appellant

[32] The Appellants are the neighbours on Stage Coach Lane and the dwelling on the Appellants' land was purposely built toward an open area. The property was purchased specifically for its open view.

[33] The Appellants were not informed of the proposed development until they received a letter on March 24, 2020. The letter did not include any plans of where the proposed development would go and they had to ask the County for more information.

[34] The Appellants' property is an investment and retirement plan and the Appellants intend to sell the property in the next couple of years. Locating the proposed oversized garage directly in the main view of the Appellants' dwelling will negatively affect the desire to purchase of potential buyers.

[35] Trees in the sightline of the Appellants' dwelling is preferred to a garage. There is a very big difference between looking at trees versus looking at a garage.

[36] The Appellants understand the Applicant's need for a larger garage due to the size of the Applicant's family but the Lands consist of two acres with plenty of room for the proposed oversized garage. The Appellants do not agree that moving the location of the oversized garage will negatively impact the Applicant's ability to maneuver vehicles. The proposed location was chosen out of convenience for the Applicant and to a great inconvenience to the Appellants.

John Bos submissions – The Applicant in opposition of the appeal

[37] Minimal relaxations are requested in the development permit application, including the height relaxation which is only 4.5% (12 inches).

[38] The proposed shed is small and the plan is to incorporate a kennel for family dogs. The playhouse has a small roof over the platform which increases the Applicant's request for number of accessory buildings from two to three.

[39] The whole proposed development has been in plans for over a year. Architects have been commissioned to ensure the proposed oversized garage complements the house and increases curb appeal.

[40] The proposed development meets set back requirements and was designed to parallel the dwelling instead of the fenceline, which would negatively impact the adjacent property.

[41] The design of the proposed oversized garage places it next to the existing driveway which increases the Applicant's maneuverability and eliminates the need to extend the driveway, which would be costly and unsightly. A different location for the proposed oversized dwelling would require more asphalt and would negatively impact the functionality of parking and moving of vehicles.

[42] The Applicants are unable to move the location of the proposed oversize garage due to a septic field and their preference to keep the backyard as open as possible for the Applicants' six children and their recreational activities, such as trampolining, soccer, baseball, and hockey. The location of the proposed oversize garage will allow the Applicants to maintain sightlines of their children playing in the yard.

[43] The size and location of the proposed oversize garage are to help maximize parking space for an RV trailer and their vehicles, particularly as the children grow older. The increased size will allow for the storage of items, keeping them safe and secure.

[44] The Applicant does not consider the Lands to be a view lot, though the mountains can be seen in the distance. The view of downtown Calgary is impeded by other houses in the neighbourhood and there are trees on the Lands and the neighbour's property that will continue to grow and obscure the view of Calgary. The proposed oversize garage will not be any different in its impact on the view.

[45] The Applicant would choose to locate a detached garage in the northwest corner of the Lands regardless of the garage's size to ensure access to the existing pad.

[46] The Appellants have planted trees that will mature overtime and further obstruct the view from the dwelling.

[47] The Applicant is open to additional landscaping to soften the look of the proposed oversize garage.

[48] The images provided in Applicant Exhibit 1 demonstrate how the design of the proposed oversize garage matches the dwelling and how it was designed to look more like a residential garage studio than a big shop.

[49] A great deal of effort was put into designing the proposed oversize garage to be visually appealing and to match the overall structure of the dwelling.

[50] There are other oversize detached garages in the area and this ample space to park vehicles is a feature people look for.

[51] The 3D renderings of the proposed oversize garage provided in Applicant Exhibit 1 show there is still a good sightline from the Appellants' dwelling. There is nearly 70 feet of distance between the two buildings. The 3D images provided in Applicant Exhibit 1 give a better idea than the hand drawn image provided in Appellant Exhibit 2 of what the proposed oversize garage will look like from the Appellants' dwelling.

[52] The Applicant purchased this type of property to build in a way that meets the Applicant's needs and not being able to build the development as proposed is detrimental to the use of the Applicant's property.

[53] There will still be a good view of the mountains from the Appellants' dwelling. There is not much of a view of Calgary from there, only of west Airdrie.

[54] The holding tank on the Lands is located behind the existing attached garage.

[55] The Applicant prefers the look of having the proposed oversized garage be in the perpendicular L-shape with the dwelling as opposed to building the proposed oversized garage to extend from the existing structure.

Frank Wildeman and Luba Kazatchenko rebuttal – the Appellants

[56] Trampolines can be moved to any location for the Applicant to watch his children. The proposed oversized garage should be moved to the end of the asphalt to the east, parallel to the other garage on the Lands. This would preserve the Appellants' view while also giving the Applicant an additional garage and ensuring a truck has access to the septic tank on the Lands.

[57] The hand drawing of the location of the proposed oversized garage provided in Appellant Exhibit 2 is quite accurate.

[58] The Appellants are asking for the proposed oversized garage to be moved to the east to maintain the view and to look at trees and not a garage.

[59] The windows on the proposed oversized garage will look directly into the Appellants' bathroom and bedroom windows which is intimidating and will impact the Appellants' privacy.

Megan Hogendoorn rebuttal – Lawyer for the Appellants

[60] The appeal is not just a matter of minor relaxations, the entire building and development itself is discretionary. Even if the proposed oversized garage met the required dimensions, it would still be entirely discretionary and the Board can deny the development permit application based on the negative impact to the Appellants' property.

Development Authority's final comments

[61] Section 4.2 of the BEASP describes the intent when it comes to residential land use but specific policy requirements do not start until section 4.21. The statement that views "shall be considered" does not mean views must not be impeded.

[62] The Act does not determine undue impact on adjacent properties in terms of monetary value.

John Bos final comments – the Applicant

[63] The Applicant would be happy to do any additional landscaping, including more trees along the north wall of the proposed oversized garage to soften its look for the Appellants. The Applicant is also amenable to glazing or frosting the windows on the north wall of the proposed oversized garage.

Luba Kazatchenko final comments – the Appellant

[64] The value of the Appellants' property comes from the view and the proposed oversize garage is not appealing and will directly impact the Appellant's emotional enjoyment of their land.

[65] The opposition is not to the size of the proposed oversize garage but to its location; it should be moved ten metres to the east.

[66] The Appellants' property is a retirement investment and is essential to their livelihood.

Megan Hogendoorn final comments– Lawyer for the Appellants

[67] The proposed development is a discretionary use and does not conform to the *Land Use Bylaw* and can only be approved by the Board or Development Authority if they are satisfied there is no material interference or affect of the use, enjoyment, or value of a neighbouring parcel. It has been demonstrated that the proposed oversize garage will materially interfere with the Appellants' property.

FINDINGS & REASONS FOR DECISION

[68] The Board finds that the proposed accessory buildings (detached garage and replacement of shed), relaxation of the maximum height requirement for accessory building (detached garage), total building area for all accessory buildings, and maximum number of accessory buildings are discretionary uses in the Residential One District in accordance with section 48 of the *Land Use Bylaw*.

[69] 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*.

[70] 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 development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[71] The Board finds that the location and height variance of the proposed oversize garage on the Lands would materially interfere with the use and enjoyment of the Appellants' property. The height of the proposed oversize garage shall meet the regulations for accessory buildings as outlined in the *Land Use Bylaw* and no variance is granted.

[72] The Board is satisfied that with moving the proposed oversize garage sixteen feet to the northeast, along with the added landscaping and removal or frosting of windows conditions, the visual impact of the proposed oversize garage on the Appellants' neighbouring parcel will be negated.

[73] The Board heard no evidence of the negative impact of the relaxations to the number of accessory dwellings, size of the proposed oversize garage, and total building area for all accessory buildings and as such these variances are granted.

CONCLUSION

[74] For the reasons set out above, the appeal is allowed in part and the decision of the Development Authority is varied. A development permit shall be issued subject to the conditions listed in this decision.

Dated at Rocky View County, in the Province of Alberta May 28, 2020.



Daniel Henn, 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 (57 pages)
2.	Appellant Exhibit 1 – Letter from D. Hansen (1 page)
3.	Appellant Exhibit 2 – Letter with images (11 pages)
4.	Appellant Exhibit 3 – Updated letter from D. Hansen (1 page)
5.	Applicant Exhibit 1 – Letter with images (7 pages)