

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

Board Order No.: 2020-SDAB-012

File No.: 05709031 PRDP20201846

Appeal by: Murray and Cecile-Marie Henderson

Hearing Date: 2020 September 16

Decision Date: 2020 September 30

Board Members: Daniel Henn, Chair
Tricia Fehr
Hazel George
Morrie M. Goetjen
Wendy Metzger

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an affected party appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority (the Development Authority) issued August 11, 2020. In this decision, the Development Authority conditionally approved development permit application PRDP20201846 for the construction of an accessory dwelling unit (secondary suite) and relaxation of the maximum habitable floor area at 251225 Range Road 33 (Lot 7 Block 3 Plan 0413985; NE-09-25-03-W5M) (the Lands).

[2] Upon notice being given, this appeal was heard on September 16, 2020 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 denied and the Development Authority's August 11, 2020 decision on development permit application PRDP20201846 is upheld.

BACKGROUND

[4] On July 7, 2020, Leonard and Andrea Steiert (the Applicants) submitted a development permit application for the construction of an accessory dwelling unit (secondary suite) and relaxation of the maximum habitable floor area (the proposed ADU) on the Lands.

[5] The Lands are ± 0.86 hectares (± 2.13 acres) in size and owned by the Applicants.

[6] The Lands' land use designation is Residential Two and is regulated in section 50 of Rocky View County *Land Use Bylaw C-4841-97* (the *Land Use Bylaw*).

[7] On August 11, 2020 the Development Authority conditionally approved the Applicants' development permit application for the proposed ADU on the Lands.

[8] On August 31, 2020, Murray and Cecile-Marie Henderson (the Appellants) submitted an affected party appeal of the Development Authority's decision to conditionally approve the proposed ADU on the Lands. The notice of hearing was issued to the Development Authority, Appellants, Applicants, and 20 adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 (MGA) and Rocky View County Council policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[9] The Board heard verbal submissions from:

- (1) Althea Panaguiton, Planner, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (3) Murray Henderson, the Appellant; and
- (4) Leonard Steiert, the Applicant in opposition to the appeal.

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

Development Authority's submissions

[11] At the time of application the Lands were zoned Residential Two under *Land Use Bylaw C-4841-97* and thus the rules and regulations of that bylaw were applied to the development permit application for the proposed ADU.

[12] The Lands fall under the Central Springbank Area Structure Plan that supports residential uses in the area but does not have any policies that specifically address accessory dwelling units.

[13] The proposed ADU is an addition to the existing single detached dwelling and contains two bedrooms with closets, one bathroom with shower, a cooking/eating facility, laundry room with storage, walkout lower level, and south and north lower decks at the main level. The existing single family home is the only structure currently on the Lands.

[14] An accessory dwelling unit is a discretionary use on the Lands and the Applicant has requested a habitable floor area of 113.71 sq. m (1,224.00 sq. ft.) which is a 3.37% variance from the 110.00 sq. m (1,184.00 sq. ft.) requirement outlined in the *Land Use Bylaw*.

[15] The proposed ADU meets all regulations outlined in the *Land Use Bylaw* with the exception of the request for the 3.37% habitable floor area variance.

[16] A site inspection of the Lands was done on July 23, 2020 and in the Development Authority's opinion, the proposed ADU fits with the existing single dwellings in the area.

[17] The Appellants' notice of appeal was omitted from the Board's agenda and submitted as a separate exhibit.

[18] The maximum allowed habitable floor area for an ADU under the County's new *Land Use Bylaw C-8000-2020* has increased to 150.00 sq. m. (1,614.59 sq. ft.). The proposed ADU would not need a variance under *Land Use Bylaw C-8000-2020* but it is the Development Authority's interpretation that the rules and regulations of *Land Use Bylaw C-4841-97* should be applied to the proposed ADU question. An ADU is a discretionary use in both *Land Use Bylaw C-4841-97* and *Land Use Bylaw C-8000-2020*.

[19] Information on the subdivision that subdivided the Lands down to a two acre parcel was not readily available. The Development Authority presumes that all applicable policy was followed at the time of subdivision.

[20] The Development Authority does not interpret the proposed ADU to be a multi-family project; it is accessory to the single family dwelling on the Lands.

[21] The *Land Use Bylaw* does not require the basement portion of the proposed ADU to be factored into the habitable floor area measurement.

Murray Henderson submissions – the Appellant

[22] Murray Henderson lives at 251205 Range Road 33 which is to the southwest of the Lands.

[23] The Hendersons purchased their property in Springbank in 1998 and the property was originally 22 acres. The owner subsequently subdivided the property into three four acre parcels. Murray Henderson was under the impression at the time that the properties would remain four acre parcels pursuant to the Central Springbank Area Structure Plan.

[24] The Hendersons lived in the United States for three years and during that time the one four acre property was further subdivided into two two acre parcels.

[25] The Applicant lives on a two acre parcel but realistically the Lands have a challenging topography with a steep ravine which means the Lands are actually only about one acre in size.

[26] The dwelling on the Lands was built several years ago and the yard remains largely unfinished. The photos submitted in Appellant Exhibit 1 show the Lands and how they are used for construction storage. The Lands are unsightly and not landscaped.

[27] The proposed ADU is a second home and makes the dwelling a multi-family property on an acreage which the Hendersons never contemplated would be allowed in the area when they moved from the inner city of Calgary. The proposed ADU will turn the existing dwelling into a duplex opening it up for a second family to move in.

[28] If the proposed ADU is approved, there will be two houses on a one acre parcel.

[29] Murray Henderson did not move to the area to live on a four acre parcel surrounded by parcels to the west that are eight acres in size and parcels to the south that are 10+ acres in size with horses only to share a driveway with a multi-family development. The proposed ADU does not fit the spirit or nature of country living.

[30] Applicants should have to follow the maximum regulations in the *Land Use Bylaw* and not ask for variances. Murray Henderson followed the rules for his development and the Applicants should have to do the same.

[31] The proposed ADU is a second house that happens to be attached to the existing house. Murray Henderson is passionate about his privacy and things that look good and the proposed ADU is not in the spirit of country living and should not be approved.

[32] Murray Henderson's driveway runs parallel to the Lands and he sees the dwelling where the proposed ADU would go when he leaves and returns for the day.

[33] It was never contemplated that there would be two acre parcels in this area, the Lands in particular because half of the property is unusable.

Leonard Steiert submissions – the Applicant in opposition to the appeal

[34] Leonard Steiert's family owns the Lands and has had no previous discussions about the proposed ADU with the Appellants.

[35] The rear deck on the dwelling on the Lands has been finished for two years and the front concrete deck is complete. There is grass around the dwelling and all areas are mowed regularly. The plan is to build a circle turnaround using the dirt from the excavation required for the proposed ADU. The remaining areas will be seeded once work on the proposed ADU is complete.

[36] 45 planted trees have been planted on the Lands and they are doing well and will be four feet tall in no time.

[37] Leonard Steiert has arranged to have the lumber and work trailers on the Lands parked elsewhere as their current location is where the proposed ADU will be located.

[38] The proposed ADU is not a multi-family unit as his son and wife will be moving in, keeping the existing dwelling as single family.

[39] The increase to the proposed ADU's footprint is 40 square feet which is the equivalent of a small walk-in closet.

[40] An estate area with restricted rules would be better for the Appellant if the Appellant is interested in strictly controlling acreage development.

[41] Leonard Steiert feels the Appellant's concerns have all been addressed.

[42] Construction of the proposed ADU will start this year but likely will not be completed due to the weather and upcoming end of the construction season.

[43] A basement will be included with the proposed ADU that could potentially be developed but there are currently no plans to develop it.

[44] The circle turnaround will have a light and bushes in the middle and there is an area near the septic field that could be a location for a kidney-shaped bush area. The rest of the Lands will be put to seed.

Murray Henderson rebuttal – the Appellant

[45] The Applicant has said his son and son's wife will be moving into the proposed ADU which makes the dwelling on the Lands a multi-family development.

[46] The proposed ADU is not in the spirit of country living and Murray Henderson had no objections when the existing dwelling was built. Only one house should be allowed on a two acre parcel.

[47] The fact that the square footage regulations changed after the original application is completely irrelevant; the rules that were in effect at the time of application should be applied.

[48] Murray Henderson feels he had a fair opportunity to present evidence to the Board.

FINDINGS & REASONS FOR DECISION

[49] Section 687(3)(a.3) of the MGA requires that the Board "comply with any land use bylaw in effect" when determining an appeal. The Board notes that Rocky View County *Land Use Bylaw C-4841-97* was in effect when the Development Authority made its August 11, 2020 decision on development permit application PRDP20201846. The Board also notes that Rocky View County's new *Land Use Bylaw C-8000-2020* came into effect on September 8, 2020. In accordance with section 687(3)(a.3) of the MGA, the Board finds that it is required to comply with *Land Use Bylaw C-8000-2020* which was in effect when the Board determined the appeal on September 16, 2020.

[50] Section 10 of *Land Use Bylaw C-8000-2020* states:

All Development Permit applications received in a complete form prior to the effective date of this Bylaw shall be processed based on 'Land Use Bylaw C-4841-97,' unless the Applicant requests in writing that the application be processed based on the regulations of this Bylaw.

The Board finds that development permit application PRDP20201846 was "received in a complete form" before September 8, 2020 and that the Applicant did not request in writing to have their development permit application processed under *Land Use Bylaw C-8000-2020*. As such, the Board was required to apply the rules and regulations of *Land Use Bylaw C-4841-97* to development permit application PRDP20201846 as required under section 10 of *Land Use Bylaw C-8000-2020*, thus complying with section 687(3)(a.3) of the MGA.

[51] The Board finds that an accessory dwelling unit is a discretionary use in the Residential Two district in accordance with section 50 of *Land Use Bylaw C-4841-97*.

[52] The Board finds it has the authority to make a decision on this matter pursuant to section 687(3)(d) of the MGA.

[53] 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.

[54] The Board heard evidence about how the rules and regulations of *Land Use Bylaw C-8000-2020* would be applied to the proposed ADU but this evidence was not considered in the Board's decision as the Board is required to apply the rules and regulations of *Land Use Bylaw C-4841-97* for the reasons already noted in this decision.

[55] The Board heard evidence from the Appellant that the subdivision that made the Lands into a two acre parcel should not have been allowed and does not fit the nature of the area. The Board finds that the subdivision that created the Lands is not the matter under appeal and concerns with it are outside of the jurisdiction of the Board. The Board gave no weight to the evidence surrounding the concerns with the subdivision that created the Lands.

[56] The Board is satisfied that the proposed ADU is subordinate to the principal dwelling and meets the ADU regulations outlined in section 28.4 of the *Land Use Bylaw*. The Board is also satisfied that the Lands have been designated for infill residential, as outlined in Map 11 of the Central Springbank Area Concept Plan.

[57] The Board is satisfied that the 3.37% variance request for the proposed ADU's habitable floor area is negligible and the Board was not convinced by the Appellant's claims that driving by the Lands with the addition of the proposed ADU will materially interfere with the use, enjoyment or value of the Appellant's property. The Board finds that the Appellant's concerns with the unsightliness of the Lands are an enforcement matter and are outside the jurisdiction of the Board.

CONCLUSION

[58] For the reasons set out above, the appeal is denied and the Development Authority's August 11, 2020 decision on development permit application PRDP20201846 is upheld.

Dated at Rocky View County, in the Province of Alberta on September 30, 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 (37 pages)
2.	Appellant Exhibit 1 (6 images)
3.	Notice of Appeal submitted by Development Authority (1 page)