

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: May 30, 2022
FILE NO.: 22-D-083

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "Development Authority") refused a development permit for a detached 591 sq. ft. garage with second level storage and 10' x 14' attached deck located at Lot 11, Block 1, Plan 5012HW – SW-9-52-2-W5, municipally described as 23-2332 Township Road 521, Parkland County (the "Lands"). The Applicant was Jeremy Thorne.

[2] On April 14, 2022, Jeremy Thorne (the "Appellant") filed an appeal of the development permit refusal.

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on May 30, 2022 via video conference in accordance with the *Meeting Procedures (COVID-19 Suppression) Regulation*, AR 50/2020.

PRELIMINARY MATTERS

A. Board Members

[4] At the outset of the appeal the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Exhibits

[5] At the beginning of the hearing the Chair confirmed that everyone in attendance had the hearing package prepared for the hearing. There was no objection to any of the exhibits which had been submitted in accordance with the Board's hearing submission dates. The Board marked those exhibits received prior to the hearing as set out at the end of this decision.

C. Miscellaneous

[6] The appeal was filed in time, in accordance with section 686 of the *Municipal*

Government Act, RSA 2000, c M-26 (the "MGA").

[7] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process. There were no preliminary matters raised at the beginning of the hearing.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[8] The Board allows the Appeal and revokes the Development Authority's decision to refuse development permit 22-D-083. The Board issues Development Permit 22-D-083 subject to the following conditions.

1. The proposed development shall conform to the application and plans submitted to the Development Officer (located at pages 19-27 of the Agenda Package) and shall not be moved, altered or enlarged except where authorized or directed through this permit approval.
2. All development shall be landscaped in a manner to prevent any surface run-off onto adjacent properties.
3. Any proposed changes shall first be submitted for review by the Development Authority. Any changes considered substantial or inconsistent with this approval, as determined by the Development Authority, may require separate development permit approval.
4. Failure to comply with the conditions of this permit may result in the permit being cancelled and or revoked.
5. The applicant is responsible to obtain building, plumbing, electrical, gas and private sewage permits which may be required. Permits must be obtained from Parkland County.
6. It is the applicant's responsibility to contact Alberta One-Call at 1-800-242-3447 before any ground disturbance.
7. The applicant is responsible for ensuring that all property approaches are designed and constructed in accordance with Parkland County's Engineering Design Standards. For more information on approach requirements, contact Land Development Engineering at 780-968-8443.

SUMMARY OF HEARING

[9] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

Development Authority

The Lands

[10] The Lands are located at 23-2332 Township Road 521 legally described as Lot 11, Block 1, Plan 5012HW – SW-9-52-2-W5 and are within the Paramac Cove Subdivision on Jackfish Lake, Parkland County.

[11] The Lands are within a High Priority Landscape as outlined in Section 7.1.5 of the Municipal Development Plan Bylaw No. 2017-14 (the "MDP"). The Lands are also within Great Waters Prime Recreation and Tourism Area as identified in Section 8.2 of the MDP. The Great Waters Prime Recreation and Tourism Area is intended to promote a quiet waterfront lifestyle. Section 7.1.9 of the MDP supports residential development on lakefront and riparian areas.

[12] The Lands are not subject to an Area Structure Plan.

[13] The Lands are also within the regionally significant Jackfish Lake / Star Lake Complex Environmentally Significant Area ("ESA") as defined in the Environmental Conservation Master Plan ("ECMP"). The Jackfish Lake / Star Lake Complex ESA is considered to have a high environmental sensitivity due to high groundwater sensitivity, high surface water quality and susceptibility to water quality degradation.

[14] The Lands are located within the LSR – Lakeshore Residential District under Parkland County Land Use Bylaw 2017-18 ("LUB").

The Development Authority's Decision

[15] The Appellant is appealing the decision of the Development Authority of Parkland County to refuse a development permit application made by the Appellant for a detached 591 sq. ft. garage with second level storage and 10' by 14' attached deck (the "Proposed Development"). The application was received on March 18, 2022, deemed complete on April 1, 2022, and was refused on April 11, 2022.

[16] The following items were submitted by the Appellant to the Development Authority in support of his application:

1. Site Plan;
2. Floor Plans; and
3. Building Elevation Drawings.

[17] The Proposed Development was determined by the Development Authority to be an Accessory Use for the existing Dwelling, Single Detached as defined in Section 11.1 and 20.2 of the LUB. Under sections 5.8 and 11.1 of the LUB, an Accessory Development falls under the Use Class of its Principal Use and is therefore a Permitted Use on the subject lands provided that the applicable setback requirements are met.

[18] The Development Authority conducted a detailed review of the application and identified that the Proposed Development does not meet the setback requirements for Accessory buildings under Section 5.8.4 of the LUB. Section 5.8.4(a)(ii) states a minimum front yard setback of 3.0 m shall be provided for Accessory buildings and garages where the vehicle doors do not face the road.

[19] The proposed front yard setback is 1.8 m. The Development Authority does not consider a setback variance for the front yard from 3.0 m to 1.8 m (a 40% variance) to be a minor variance. Section 16.11.3 of Parkland County's Land Use Bylaw grants the Development Authority variance authority to approve an application notwithstanding that the proposed

development does not comply with the LUB. However, due to the extent of the variance, the Development Authority did not approve the variance.

[20] The Development Authority submitted that the SDAB uphold the decision of the Development Authority and concluded that the Proposed Development is not in compliance with the setback requirements for the LSR – Lakeshore Residential District.

[21] In response to questions from the Board, the Development Authority advised that the Development Authority is not aware of any plans for the land between the Lands' property line and the internal subdivision road. However, there is a road right-of-way that runs adjacent to the Lands. Whether Parkland County will exercise the road right-of-way is subject to the discretion of Parkland County's engineering department. If the road right-of-way is not needed, Parkland County would sell that land.

Appellant Jeremy Thorne

[22] Mr. Thorne advised the Board that pages 54 and 55 of the Agenda package demonstrate how close the Proposed Development will be to the property line. The roped-off rectangle in the photographs marked where the Proposed Development will go. The line at the back of the property in the photographs marked the property line.

[23] Mr. Thorne submitted that it would not be possible for him to build the Proposed Development with a setback of 3.0 meters from the property line due to his water tank and a proposed sidewalk.

[24] Mr. Thorne is proposing to build the Proposed Development some distance away from his water tank, which is indicated by the green culvert in the ground seen on page 51 of the Agenda package. Mr. Thorne submitted that he is required to leave space between the water tank and the Proposed Development in order to build a sidewalk from the Proposed Development to the residence. The sidewalk must be wide enough to accommodate a wheelchair as Mr. Thorne has family members with mobility issues. As shown on pages 63 to 64 of the Agenda package, the space between water tank and the Proposed Development is just wide enough for a wheelchair to pass.

[25] Mr. Thorne advised that he cannot shorten the Proposed Development. The Proposed Development must be large enough to allow a wheelchair to manoeuvre inside the garage. Pages 65 to 66 of the Agenda package shows a stake next to a wheelchair that indicates where the door will open inside the garage and demonstrates that there is just enough room for a wheelchair to manoeuvre inside the garage.

[26] Mr. Thorne submitted that he cannot build the Proposed Development where his shed is located. His septic system is located underneath the shed and behind the black fence (as seen on page 52 of the Agenda package). Mr. Thorne advised that the shed is temporary storage. Mr. Thorne will be removing the shed to allow access to the Proposed Development.

[27] Mr. Thorne also advised that the property line is 40 feet away from the internal subdivision road. This 40-foot wide stretch of land consists of a driveway from the property line to the subdivision road, as shown on page 57 of the Agenda package. This driveway and the

land on either side of the driveway is Parkland County land and contains the road right-of-way. Mr. Thorne also advised that he and other neighbours would be interested in purchasing this land.

[28] As part of his submissions, Mr. Thorne included six emails from immediate neighbours endorsing the Proposed Development. Mr. Thorne highlighted that his immediate neighbour to the north also required a variance for his garage. In that decision, according to Mr. Thorne, a variance of 5 feet was granted. Mr. Thorne is looking for a similar decision from the Board in respect of the Proposed Development.

[29] In response to questions from the Board, Mr. Thorne advised as follows:

- a. The gravel driveway with the quad and car that can be seen on page 55 of the Agenda package is Parkland County property.
- b. To Mr. Thorne's knowledge, none of his neighbours opposed his appeal.
- c. With regard to the letters of support, two are from Mr. Thorne's immediate neighbours. One author lives next to the adjacent neighbour to the north, and another lives immediately adjacent to the neighbour to the south. One supporter resides five or six houses south of the Lands and another resides across the street from the Lands.

FINDINGS OF FACT

[30] In addition to the specific facts set out under the Board's reasons, the Board finds the following as facts.

[31] The Lands are located at Lot 11, Block 1, Plan 5012HW, within the lands legally described as SW-9-52-2-W5 and municipally described as 23-2332 Township Road 521, Parkland County.

[32] The Lands are located within the LSR – Lakeshore Residential District of the LUB.

[33] The use of the Proposed Development is Accessory Use for the existing Dwelling, Single Detached.

[34] Dwelling, Single Detached is a permitted use in the LSR – Lakeshore Residential District.

[35] An Accessory Development falls under the Use Class of its Principal Use and is therefore a Permitted Use on the subject lands provided that the applicable regulations are met.

[36] The Appellant, Jeremy Thorne, is an affected person.

[37] The requested variance will 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.

REASONS

Jurisdiction

[38] The Board notes that its jurisdiction is found in section 687(3) of the MGA. In making this decision, the Board has examined the provisions of the LUB and has considered the oral and written submissions made by and on behalf of those who provided evidence: the Development Authority and the Appellant.

- 687(3)** *In determining an appeal, the subdivision and development appeal board*
- (a) repealed 2020 c39 s10(52)*
 - (a.1) must comply with any applicable land use policies;*
 - (a.2) subject to section 638, must comply with any applicable statutory plans;*
 - (a.3) subject to clause (a.4) and (d), must comply with any land use bylaw in effect;*
 - (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;*
 - (b) must have regard to but is not bound by the subdivision and development regulations;*
 - (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*
 - (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,*
 - (i) the proposed development would not*
 - (A) unduly interfere with the amenities of the neighbourhood, or*
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,*
 - and*
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

Affected Persons

[39] The first question the Board must determine is whether those appearing and speaking before the Board are affected persons. The Board notes that no party raised any objection with any other party's participation.

[40] Mr. Thorne confirmed that he filed the Notice of Appeal. As Mr. Thorne's development permit is under appeal, the Board finds that Mr. Thorne is an affected person.

Issues to be Decided

[41] The Board must determine:

- a. Is the Proposed Development in compliance with the applicable statutory plans?
- b. What is the use?
- c. Does the Proposed Development comply with the LUB regulations?
- d. If the Proposed Development does not comply with the LUB regulations, should the Board exercise its variance powers under Section 687(3)(d) of the MGA to vary the setback requirements?

Compliance with Statutory Plans

[42] The only statutory plan which applies to the Lands is the MDP, as there is no ASP which applies to the Lands. The only evidence before the Board relating to the compliance of the Proposed Development with the MDP is the information presented by the Development Authority. The Lands are within Great Waters Prime Recreation and Tourism Area which is intended to promote a quiet waterfront lifestyle and section 7.1.9 of the MDP supports residential development on lakefront and riparian areas. The Board is of the opinion that an accessory structure such as a garage complies with the intention of the MDP and the Board finds that the Proposed Development complies with the MDP.

What is the Use?

[43] The Development Authority determined that the use of the Proposed Development was Accessory Use for the existing Dwelling, Single Detached as the LUB defines "Accessory" as "subordinate, incidental to, and exclusively devoted to a principal Use or principal Building".

[44] In reviewing the details of this appeal, the Board notes that the Proposed Development is a 591 sq. ft. garage with second level storage and a 10' x 14' attached deck. The Board notes that there was no dispute before the Board that the Proposed Development was anything other than an Accessory Use for the existing Dwelling, Single Detached. In examining the Proposed Development and the evidence provided about the use of the garage as part of the residential development, the Board finds as a fact that the garage and deck are subordinate, incidental or exclusively devoted to the existing Dwelling, Single Detached and therefore concludes that the use is an Accessory Use for the existing Dwelling, Single Detached.

[45] An Accessory Development falls under the Use Class of its Principal Use. The Principal Use is a Dwelling, Single Detached and is a Permitted Use as set out in s. 5.8 of the LSR – Lakeshore Residential District of the LUB. Therefore, the Proposed Development, an accessory development to the Dwelling, Single Detached is a Permitted Use provided that the applicable regulations are met (see sections 5.8 and 11.1 of the LUB).

Does the Use Comply with LUB Regulations?

[46] The uncontradicted evidence before the Board is that the Proposed Development does not conform to the setback requirements for accessory buildings as provided in the LUB. Section 5.8.4(a)(ii) of the LUB requires a setback of 3.0 meters for accessory buildings when the vehicle doors do not face the internal subdivision road. The Proposed Development is

located 1.8 meters from the property line and requires a variance of the setback from 3.0 meters to 1.8 meters.

[47] As a result, based on the provisions of the LUB, the submissions of the parties and the exhibits showing the location of the Proposed Development, the Board finds as a fact the Proposed Development does not comply with the setback requirements in the LUB.

Should the Board exercise its variance powers under Section 687(3)(d) of the MGA to vary the set back requirements?

[48] If persuaded by the evidence presented to it, the Board has the authority to exercise the variance power granted to it under section 687(3)(d) of the MGA. The question for the Board is whether granting the variance will unduly interfere with the amenities of the neighborhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels.

[49] The Board is aware of the effect of the recent Court of Appeal case in *Edmonton (City of) Library Board v. Edmonton (City of)*, 2021 ABCA 355 (the "*Edmonton Library case*"). The Court of Appeal has indicated that in relation to the question of onus, the Appellant does not have an onus to justify the variance. The Board is entitled to weigh the evidence submitted in favor of and in opposition to the request for the variance to come to its opinion about whether to grant the variance.

[50] The Board notes the Court of Appeal has confirmed that development standards may serve one or more planning purposes, which include utilitarian, safety, privacy, environmental, aesthetic, and social purposes (see paragraph 52 of the *Edmonton Library case*). The Board notes the Court of Appeal has confirmed that the Board has wide discretion when considering a request for a variance.

[51] The Development Authority argued that the variance is not a minor variance. From these submissions, the Board inferred that the Development Authority considers the variance to unduly interfere with the amenities of the neighborhood and to materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.

[52] The Appellant's arguments suggested that the variance would not unduly interfere with the amenities of the neighborhood or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land. Mr. Thorne gave evidence related to the safety purposes of the Proposed Development, which the Board considered to determine whether the variance should be granted. Mr. Thorne also argued that there is hardship to meeting the setback requirements in the LUB.

Significance of Hardship

[53] The Board accepts the Appellant's evidence that the Lands have unique features that impacts development, including the location of the water tank and the septic system, and that the Appellant has unique circumstances that require consideration, including the mobility requirements of the Appellant's family member. The Board notes that the Appellant's rationale for why the Proposed Development did not comply with the setback requirements in the LUB was reasonable, and accords with the evidence that the Board could see from the photographs

of the Lands as part of the Agenda package. The Board is of the opinion that the Appellant made reasonable attempts to comply with the required setback distances.

[54] Despite its acknowledgement of the unique development challenges arising from the Lands and the Appellant's unique circumstances, the Board wishes to consider whether the variances will unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, value and enjoyment of neighbouring parcels. The Board's analysis in this respect is described below.

Safety

[55] The Board considered the safety implications of the variance. Mr. Thorne's evidence was that the Proposed Development did not encroach on the internal subdivision road or the road right-of-way. This submission was supported by the photographs submitted as part of the Agenda package. In light of this evidence, the Board finds the variance of the setback does not create a material safety risk to users of the internal subdivision road or of a future road on the road right-of-way nor does it cause undue interference with neighborhood amenities with respect to safety.

[56] The Board finds that, by contrast, denying the development permit may cause safety issues. Mr. Thorne's evidence was that there would be insufficient room for a sidewalk by the garage to allow a wheelchair if the setback was not granted. Without a proper sidewalk for a wheelchair, Mr. Thorne's family member will have difficulty safely accessing the garage and the residence. The Board notes that the evidence about the sidewalk was uncontradicted by the Development Authority.

[57] In the Board's view, this factor favours granting the variance to the setback.

Environment

[58] The Board noted that the Lands are subject to the Jackfish Lake / Star Lake Complex ESA. The existence of the ECMP demonstrates Parkland County Council's concern for ESAs. However, neither party provided any specific evidence in regard to the impact of the Proposed Development on the ESA. The Board did note that this development was not on the lake shore side of the property and therefore the Board concludes that there is no significant impact from the Proposed Development.

Amenities of the Neighbourhood

[59] The Development Authority advised that Parkland County does not have plans to build a road on the road right-of-way adjacent to the Lands, which currently serves as a driveway for Mr. Thorne and otherwise as unused space. Based on this information, the Board concludes that the Proposed Development would not interfere with the current use of that land.

[60] Should Parkland County develop a road on the right-of-way, the Board finds that the Proposed Development would be 1.8 meters inside the Appellant's property line and therefore would not encroach onto Parkland County Property. Thus, even if a road is developed, the

Board concludes that waiving the set back distance would not cause an undue interference with the amenities of the neighbourhood, and in particular its roads.

Use, Value and Enjoyment of Neighbouring Land

[61] The Board also considered the impact of the variance on the use, value and enjoyment of neighbouring lands. The Appellant's evidence was that his neighbors did not oppose the variance. The emails before the Board suggested that 6 neighbors did not think that the Proposed Development would materially interfere with the use, value or enjoyment of their property. The Appellant also gave evidence that neighbouring homes had similar variances granted to their garages. For example, Mr. Thorne's neighbor, Mr. Fasek, required a five-foot variance to the location of his garage.

[62] The Board notes that the evidence from neighbouring property owners in support of the Proposed Development permits the Board to infer that the neighbours do not believe the Proposed Development will have any impact on their use, value or enjoyment. In the absence of any evidence which suggests an impact on the use, value or enjoyment of the neighbouring properties, the Board finds as a fact that the Proposed Development and the variance do not materially interfere with or affect the use, value or enjoyment of neighbouring parcels.

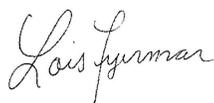
[63] Having considered all of the evidence presented, the Board is of the opinion that the Proposed Development does not unduly interfere with the amenities of the neighborhood or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.

Conclusion

[64] For the above reasons, the Board is of the opinion that it should exercise its variance powers to approve the variance to the setback sought by the Appellant. For these reasons, the Board allows the Appeal and grants development permit 22-D-083 on the conditions set out above.

[65] The Board acknowledges the parties' helpful photographs and submissions.

Issued this 10th day of June, 2022 for the Parkland County Subdivision and Development Appeal Board.



L. Tyerman, Clerk of the SDAB, on behalf of B. Bundt, Chair
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, RSA 2000, c M-26.

APPENDIX "A"
REPRESENTATIONS

PERSON APPEARING

1. Jeremy Thorne, Appellant
2. Seghan MacDonald, Development Authority
3. Rachelle Trovato, Development Authority, Observer

APPENDIX "B"
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

May 30, 2022 Agenda Package			
Exhibit	Description	Date	Pages
1.	Agenda Coversheet	May 26, 2022	1
2.	Table of Contents	May 26, 2022	2
3.	Notice of Appeal – Jeremy Thorne	April 14, 2022	5-14
4.	Submission of the Development Authority	May 25, 2022	15-50
5.	Submission of the Appellant – Jeremy Thorne	May 12, 2022	51-78