

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: September 19, 2022
FILE NO.: 22-D-334

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "Development Authority") approved a development permit for an Accessory Building – 8x40 Shipping Container with a side-yard variance from 3 metres to 1.8 metres, located at Lot 22, Block 1, Plan 0420260, Century Estates, NE-34-53-27-W4 and municipally described as 22-53522 Range Road 272 (the "Lands").

[2] Darian and Veronica Hildebrandt (the "Appellants") appealed the development permit.

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on September 19, 2022, in person at Parkland County Council Chambers - 53109A Hwy 779, Parkland County, AB.

PRELIMINARY MATTERS

A. Board Members

[4] 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] The Chair confirmed that everyone in attendance had the full hearing package prepared for the hearing. There were no objections to any of the exhibits. The Board marked the exhibits received 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.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[8] The Board dismissed the appeal.

SUMMARY OF HEARING

[9] The following is a brief summary of the oral and written evidence and arguments 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

[10] On August 3, 2022, the Development Authority received a development permit application for a 40' x 8' shipping container (the "Shipping Container") from the Applicant.

[11] The Lands are legally described as Plan 0420260, Block 1, Lot 22, and are within the Country Residential District of the Parkland County Land Use Bylaw (the "LUB").

[12] A shipping container may be used for storage as an Accessory Building under s. 12.18 of the LUB. Accessory Building is a permitted use in the Country Residential District.

[13] The Shipping Container is located in the northeast corner of the Lands. The proposed development required a variance because the Shipping Container is 1.8 metres from the eastern property line and the side-yard setback required under the LUB is 3.0 metres. At the time the County received the development permit application, the Shipping Container was already located on the Lands.

[14] On August 17, 2022, the Development Authority approved the development permit application in accordance with s. 16.11.1 of the LUB, which states:

...the Development Authority may approve an application for a development permit notwithstanding that the proposed development does not comply with the Bylaws, if in the opinion of the Development Authority the proposed development would not:

- a) Unduly interfere with the amenities of the neighbourhood;*
- b) Materially interfere with or affect the use, enjoyment, or value of neighbouring properties; and,*
- c) Conform with the use prescribed for that land or building under this Bylaw.*

[15] The Development Authority granted the variance because in the opinion of the Development Authority, the Shipping Container did not materially interfere with adjacent lands. The Development Authority noted that the Shipping Container was approximately 185 feet from the nearest residence to the east (the Appellants' residence), and was obstructed from view to the north by an accessory building on a neighbouring property.

[16] The Development Authority also imposed conditions on the development permit. The Development Authority drew the Board's attention to two of the conditions on the development permit which require the Shipping Container to be:

1. visually screened from public roads and neighbouring properties; and
2. painted, sided or finished in a manner to match the primary residence; within one year of the issuance of the development permit.

[17] The Development Authority confirmed that these are standard conditions on this type of development permit, and would be required even if the Shipping Container did not require a variance for the side-yard setback.

[18] In response to Board questions, the Development Authority stated that if the Shipping Container had been located outside of the side-yard setback area, it would be classified as a permitted use and there would not have been an opportunity for adjacent landowners to appeal to the Board.

[19] The Development Authority also confirmed that the Development Authority is not concerned with who owns the Shipping Container; they are concerned with use.

[20] Finally, the Development Authority confirmed that it is not unusual for there to be errors on application forms for development permits when these forms are submitted. In this case, the Development Authority noted during its initial review that the development permit application did not include a request for a variance to the side-yard setback. In this case, the Development Authority identified the error and determined it would issue a variance based on the criteria under the LUB.

[21] The Development Authority argued that the appeal should be dismissed.

Appellants Darian and Veronica Hildebrandt

[22] The Appellants live directly to the east of the Lands, and their property shares a boundary with the Applicant.

[23] The Appellants argued that the County's process for development permits was not followed in this case. The Shipping Container was placed on the Lands on July 14, 2022, prior to the Applicant obtaining a development permit. The Shipping Container was also placed too close to the property line, closer than the required setback required by the LUB.

[24] The Appellants further argued that the Shipping Container does not currently have the County's required screening or finishing to match the property. It is unfair to the neighbours to wait for one year for screening and finishing to take place.

[25] The Appellants suspect that the Shipping Container may be used as a business for monetary gain; however, they do not have any direct evidence of this. The Appellants have seen people who are not the Applicant accessing the Shipping Container and believe there are tools being stored inside.

[26] The Appellants directed the Board to the requirements for shipping containers in s. 12.18 of the LUB and argued the Shipping Container does not comply with four of the five requirements: it is not being used for storage by the owner of the property; it was closer than the required side-yard setback; it is visible from public roads and neighbouring properties; and has not been finished. The Shipping Container is currently coloured sky blue.

[27] The Appellant argued s. 5.6.4.a.ii of the LUB requires that it is a condition of development that "at all times the privacy and enjoyment of nearby dwellings shall be preserved and, subject to the purpose of the district, any approved home based business shall not unreasonably affect the residential amenities of the neighbour." The Appellants noted that three of the adjacent property owners to the Lands have indicated that their enjoyment of their own properties has been hindered by the shipping container in its current location. Therefore, the Applicant has breached the requirement of the LUB.

[28] The Appellants expressed concern with the safety of their children due to increased vehicle traffic accessing the Shipping Container. The Appellants stated that their children play in the yard near to where vehicles drive to access the Shipping Container at the back of the neighbour's lot. The Appellants also feel uncomfortable due to a lack of privacy with different people accessing the Shipping Container at different times of the day and night.

[29] Along with their written submissions, the Appellants provided photos and videos of the Shipping Container as viewed from their property.

[30] In response to Board questions, the Appellants stated that even if the Shipping Container was moved to comply with the required side-yard setback, they would still object to the Shipping Container being located in the northeast corner of the Lands. The shipping container would be better located at the front of the Lands to prevent people from driving across the Lands to access it.

In Support of the Appellant – Tamara and Lorne Boyes

[31] Tamara and Lorne Boyes submitted a letter to the Board along with photographs taken from their property. They live at #42 53522 RR272, to the north of the Lands.

[32] The Boyes' state that the Shipping Container has negatively impacted their enjoyment of their yard. Even with the trees along the fence line, the blue Shipping Container ruins their relaxing view of nature.

In Support of the Appellant – Robert Rodden

[33] Robert Rodden submitted a letter to the Board along with photographs. He lives at #26 53522 RR272, to the north of the Lands.

[34] Mr. Rodden argued that the Shipping Container is non-compliant with County Bylaws and is adversely affecting neighbouring properties. He is concerned with the privacy implications from the extra vehicle traffic to and from the Shipping Container, and random strangers near his property.

[35] Mr. Rodden believes the Shipping Container will be removed within 12 months, but that neighbours will be forced to deal with the eyesore for and extra traffic until that time.

Applicant – Jonathan Walter

[36] The Applicant did not provide any evidence or written submissions to the Board and did not attend the hearing.

FINDINGS OF FACT

[37] The Lands are located at Lot 22, Block 1, Plan 0420260, Century Estates, NE-34-53-27-W4 and municipally described as 22-53522 Range Road 272.

[38] The Lands are located within the CR - Country Residential District of the LUB.

[39] The use of the Lands at issue is a shipping container which is an Accessory Use to a Dwelling, Single Detached.

[40] The Shipping Container is 1.8 metres from the eastern property line. The LUB requires a 3 metre side-yard setback.

[41] The Appellants are affected people.

[42] Tamara and Lorne Boyes are affected people.

[43] Robert Rodden is an affected person.

[44] The Applicant is an affected person.

REASONS

Jurisdiction

[45] 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 the parties.

687(3) In determining an appeal, the subdivision and development appeal board

- ...*
- (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

[46] The first question the Board must determine is whether those individuals who made written submissions and appeared before the Board are affected persons. The Board notes that no party raised any objection with any other party's participation.

[47] The Appellants, the Boyes, and Mr. Rodden all live on properties that are adjacent to the Lands. Based on their proximity to the proposed development, the Board finds that the Appellants, the Boyes, and Mr. Rodden are all affected persons.

[48] As the person whose development permit is under appeal, the Applicant is also affected by this appeal.

Statutory Plans

[49] The only evidence before the Board on the applicable Municipal Development Plan Bylaw 2017-14 (the "MDP") is the information from the Development Authority. The Lands are within the Country Residential Area of the MDP Development Concept. The Board heard no evidence that suggests that the proposed development is not in compliance with the MDP.

Land Use District

[50] The Lands are zoned as CR - Country Residential.

Nature of The Use

[51] The Development Authority determined that the Shipping Container Use Class is Accessory Building. Accessory Uses are a permitted use on the Lands, as set out in s. 5.3 of the LUB. The Board agrees for the following reasons.

[52] With respect to shipping containers generally, s. 12.18 of the LUB states: "a Shipping Container may be used for storage as an accessory building and the square footage to be calculated per Section 11.1.3. The Shipping Container shall be subject to the issuance of a Building Permit."

[53] The evidence before the Board is that the Shipping Container is being used for storage, which is consistent with the use described in s. 12.18 of the LUB.

[54] The Appellants believe that the Shipping Container may be used by the Appellant for monetary gain and may be owned by someone other than the Appellant. However, by the Appellants' own admission there was no evidence before the Board that this is the case. In any event, the person who owns the Shipping Container is not relevant to the determination of its use.

[55] In light of the evidence that the Shipping Container is being used for storage, and in the absence of any evidence to the contrary, the Board is satisfied that the Shipping Container is being used in a manner consistent with s. 12.18 of the LUB, and is therefore an accessory building. Accessory Uses are permitted under s. 5.3.2(d) of the LUB.

Is the shipping container compatible with neighbouring uses?

[56] Having concluded that the Shipping Container is an accessory building, the Board considered whether there was any reason that the proposed development does not comply with the LUB.

[57] The Board accepts the undisputed evidence that the Shipping Container is located 1.8 metres from the eastern boundary of the Lands. This is within the 3.0 m side-yard setback requirement and is contrary to s. 5.3.4.b.v of the LUB. Due to the location of the Shipping Container, the Board must consider whether to grant a variance.

Variance Test – s. 687(3)(d) of the *Municipal Government Act*

[58] The variance power of the Board is set out in s. 687(3)(d) of the MGA which provides:

(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

...

(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.*

[59] In the Board's view, the language of section 687 is intended to grant broad authority to the Board to consider and grant variances. As the Court of Appeal noted in *Edmonton (City of) Library Board v Edmonton (City of)*, 2021 ABCA 355 (CanLII) at paras 46-47:

Section 687(3)(d) gives an appeal board wide discretion in deciding whether the negative effects condition has been met as confirmed by language such as "may", "in its opinion", "unduly" and "materially"...

...that power is not limited to cases of undue hardship or unique or minor situations

[60] The Board agrees that the qualifying language of "unduly interfere" and "materially interfere" in s. 687(3)(d) suggests that a variance can be granted even if a proposed development has some impact on the amenities of the neighbourhood; or some impact of the use, enjoyment or value of neighbouring lands. The test is intended to be flexible enough for the Board to manage the legislative objective of balancing the private interests of landowners to develop, with those of the community and adjacent neighbours. Most development will have some effect on neighbouring parcels and the test must not be applied so strictly so as to stymie development completely.

[61] While the Appellants argued that s. 5.6.4.a.ii of the LUB prohibits any development that affects the privacy and enjoyment of nearby dwellings, the Board notes that the section of the LUB that the Appellant referred to applies to a different district (Country Residential Work/Live District), and describes restrictions on home-based business, not Accessory Buildings. Accordingly, the Board did not find this section of the LUB to be useful in its determination or application of the legal test for a variance.

Use, Enjoyment and Value of Neighbouring Parcels

[62] The Appellants and other affected parties raised issues that the proposed development will interfere with the use, enjoyment and value of their properties. The Appellants argued that the proposed development raised safety and privacy concerns for them, and that the Shipping Container harmed their enjoyment of their property due to its location, visibility and colour.

[63] In assessing whether there has been a material interference with the use, enjoyment, and value of neighbouring properties, the Board considered the following evidence and arguments before it.

[64] The Board considered the evidence of the Development Authority that if the shipping container had been placed 3.0 metres from the eastern property line, the Shipping Container would not have required a variance, and therefore not subject to any appeal. Further, in response to questions from the Board, the Appellants admitted that even were the Shipping Container to be moved back 1.2 metres, the Appellants would not find that acceptable. In the Board's view, this suggests that the concerns of the Appellants are more focused on the fact

that the Shipping Container is on the Lands at all, rather than its proximity to the property line and the setback amount. In the Board's view, interference with the use, enjoyment and value of neighbouring lands must be considered in the context of the Country Residential District – where the starting presumption is that the use of a shipping container for storage as an Accessory Building is permissible.

[65] With respect to use and enjoyment of the neighbouring lands, the Board also considered the Appellants' evidence that their children play in the yard and that the Appellants have safety concerns due to vehicles travelling to the Shipping Container. The Board accepts that the Appellants evidence has safety concerns. However, the Board notes that there was no suggestion that vehicles are driving on the Appellants' property. In the Board's view, this suggests that the materiality of the safety concerns is lesser.

[66] Similarly, while the Board accepts that the Appellants have some privacy concerns, the examples provided by the Appellants appear to be limited in frequency and impact. The Board accepts that unknown vehicles can cause residents of Country Residential districts concern. However, in the Board's opinion the occasional vehicle driving across the Lands to access the Shipping Container does not rise to the level of a material interference with use or enjoyment of the neighbouring property.

[67] In assessing the effect of the proposed development, the Board also considered the distance between the Shipping Container and the residences on the neighbouring properties. The Appellants argued that the Shipping Container would be better suited somewhere else on the Lands. The unchallenged evidence before the Board is that the Shipping Container is approximately 185 feet from the nearest residence. In the Board's view, this is not an insignificant distance given the size of the Lands and neighbouring parcels. The Board also considered the location of the Shipping Container, and notes that the Shipping Container is located in the back corner of the Lands and is partially obstructed from view from one of the neighbours by that neighbour's accessory building. In the Board's view, the distance from neighbouring residences, and location of the Shipping Container both contribute to a lesser interference with neighbouring parcels. The Board again notes that were the Shipping Container located 1.2 metres to the west, it would have been permitted under the LUB with no right of appeal.

[68] In assessing the materiality of the interference, the Board also considered the conditions on the Development Permit. The Board specifically considered the two conditions which require the Applicant to: visually screen the Shipping Container from public roads and neighbouring properties within 12 months of the issuance of the development permit; and either paint, side, or finish the exterior of the Shipping Container to match the primary residence within one year. The Board notes that these are standalone conditions, and that both conditions must be complied with by the Applicant. In the Board's view, when taken together these two conditions will dramatically reduce the impact of the Shipping container on the use, enjoyment and value of neighbouring properties. The introduction of visual screening will decrease the visibility of the shipping container both to the road and neighbouring parcels. This will help address the concerns raised by the Appellants and those in support of the appeal regarding concerns with privacy, and enjoyment of the view from their property. The second condition requires that the Shipping Container will be a less obvious bright colour, further decreasing visibility. This will help address the concern raised by Mr. Rodden that the Shipping Container is an "eyesore".

[69] With respect to the timing of the conditions, the Board agrees with the Development Authority that 12 months is a reasonable amount of time for the Applicant to complete the work necessary to comply with the conditions. The Board notes that 12 months is the standard amount of time provided in LUB s. 16.14.6 for compliance with a condition on a development permit. Further, the Board accepts that there is a significant amount of work the Applicant will have to undertake, which will require some time to plan and execute.

[70] Having considered all of the evidence and arguments before it, the Board concluded that the proposed development permit does not meet the threshold of material interference with the use, enjoyment and value of the neighbouring parcels of land. While the proposed development does have some effect on the neighbouring parcels, these effects do not rise to the materiality threshold set out in the MGA. The fact that shipping containers are not uncommon in Country Residential districts, the distance from neighbouring residences, and the conditions placed on the development permit all contribute to the Board's conclusion that the use, enjoyment and value of neighbouring parcels will not be materially affected by the development. In particular the conditions on the development permit play a crucial role in mitigating the potential interference with neighbouring parcels. Accordingly, the Board considers those conditions essential to the development permit going forward.

Other Arguments

[71] In their written and oral argument the Appellants raised two further issues with the development: the fact that the Shipping Container was transported to the Lands prior to the application for a development permit; and errors on the Applicant's development permit application form.

[72] The Board accepts the undisputed evidence that the Shipping Container was transported and set up on the Lands prior to the Applicant seeking a development permit. The Board also accepts that there were errors on the Applicant's development permit application form. The evidence of the Development Authority was that it is not unusual for there to be errors in any given application, or for an individual to be unfamiliar with all the requirements of the County LUB before undertaking development. While the Board accepts that the Appellants have concerns about the manner in which the Applicant sought and obtained his development permit, the Board notes that the Applicant did ultimately apply, and receive a development permit.

[73] In any event, the arguments raised by the Appellant are not relevant to the role of the Board, which must consider non-compliance with the LUB through the lens of s. 687(3)(d). The questions before the Board are whether the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and whether the proposed development conforms with the use prescribed for that land or building in the land use bylaw. Whether the Applicant followed the steps necessary to obtain a development permit in the correct order is not material to the Board's task under the Act. As set out above, the Board is satisfied that the proposed development will not materially interfere with the use, enjoyment and value of neighbouring lands; and the evidence of the use of the Shipping Container is consistent with the LUB.

Conclusion

[74] Having considered the evidence and argument before it, the Board is satisfied that the Accessory Building development is compatible with neighbouring uses. For these reasons, the Board dismisses the appeal and allows the development permit on the same conditions as placed upon the development permit by the Development Authority.

[75] Issued this 30th day of September, 2022 for the Parkland County Subdivision and Development Appeal Board.



Barb Williams, 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

PERSONS APPEARING

1. Karen Kormos, Development Authority
2. Darian and Veronica Hildebrant, Appellant

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

September 19, 2022 Agenda Package			
Exhibit	Description	Date	Pages
1.	Agenda Coversheet	September 19, 2022	1
2.	Table of Contents	September 19, 2022	2
3.	Notice of Appeal	September 1, 2022	6
4.	Hearing Notification	September 2, 2022	7
5.	Development Authority Submissions	August 16, 2022	9-42
6.	Appellant Submissions	September 13, 2022	43-57
7.	Appellant Video Submissions	September 14, 2022	n/a
8.	Submissions in Support of Appellants	September 13, 2022	58-74