

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
PARKLAND COUNTY**

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DATE: July 25<sup>th</sup>, 2016  
FILE NO.: 16-D-301

**Notice of Decision of Subdivision and Development Appeal Board**

**INTRODUCTION**

[1] The Development Authority of Parkland County (the "County") approved, with conditions, a development permit under Development Permit No. 16-D-301 (the "Development Permit") for an accessory building side yard variance for an existing shed from 3 m (10.0 ft.) to 0 m (0.0 ft.) on Plan 3984MC, Block 1, Lot 1, W5M- 2-52-9 NE, Municipal Address: 1, 2307 Township Road 522 (the "Site"). A property owner in the vicinity of the Site appealed the Development Permit.

**PRELIMINARY MATTERS**

**A. Board Members**

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

**B. Additional Materials**

[3] The matter came before the Board on July 25, 2016. Although a number of documents were filed by the parties to the appeal before July 25, 2016, the Appellant filed additional material indicated as exhibit 9 in Appendix "B" at the outset of the hearing on July 25, 2016.

[4] There were no adjournments requested at the start of the hearing on July 25, 2016.

**C. Miscellaneous**

[5] The Board marked the exhibits as set out at the end of this decision.

[6] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A. 2000, c.M-26 (the "Act").

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

## **SUMMARY OF HEARING**

[8] The following is a brief summary of the oral evidence heard by the Board. The Board has also reviewed all written submissions filed with the Board.

[9] The Board first heard from the Development Authority.

[10] The Development Authority provided an overview of the Development Permit. The applicant, Angela Gauthier on behalf of the registered property owner, applied for a development permit for an accessory building side yard variance for an existing shed from 3 m (10.0 ft.) to 0 m (0.0 ft.). A development permit was granted on June 17, 2016, with conditions, for an accessory building (shed). The Development Permit relaxed the setback requirement for the shed from 3 m (10.0 ft.) to 0 m (0.0 ft.) and required the removal of the portion of the shed encroaching onto Lot 2. The setback requirement was relaxed in accordance with Section 16.11 of Parkland County Land Use Bylaw 20-2009 as the opinion of the Development Authority was the variance will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment, or value of neighbouring properties.

[11] In response to specific questions asked by the Board members Mr. Thomas advised subsequent to the release of the Planning and Development Services letter dated November 30, 2015, they have determined that this matter is a development that is subject to a development permit. Further Mr. Thomas advised that the water coming off the shed roof could drain onto adjacent property and that the Development Authority did not feel fencing was necessary when the Development Permit was approved, however, it could be considered as a new condition of approval if desired.

[12] The Board next heard from the Appellant, Mr. Steve Zelych.

[13] Mr. Zelych lives adjacent to the south boundary of the Site on Plan 3984MC, Block 1, Lot 2. He had concerns in relation to a portion of the shed encroaching onto Lot 2 and the accessory building side yard requirement for the shed being reduced from 3 m (10.0 ft.) to 0 m (0.0 ft.). Further he was concerned that a 0 m (0.0 ft.) side yard setback for the shed requires the Applicant to use Lot 2 to resolve the encroachment.

[14] In response to specific questions asked by the Board members Mr. Zelych advised he does not believe the shed was moved in the past or that the size of the shed was increased. Mr. Thomas advised the Real Property Report was used to determine the present encroachment of

the shed on Lot 2, he believes previous Land Use Bylaws did not require accessory buildings to obtain a development permit, the encroachment of the shed on Lot 2 is the present concern, and any building can be moved with varying degrees of difficulty. Mr. Zelych advised he would prefer a 1 m side yard setback for the shed so the Applicant has access to the shed from Lot 1.

[15] Following the questioning of the Appellant, the Chair asked if there was anyone else wishing to speak in support of the appeal. The Board heard from Ms. Freda Patterson.

[16] Ms. Patterson resides adjacent to the north boundary of the Site on Plan 5373KS, Lot A. She has owned the property for 5 years and during that time she is aware that Mr. Zelych has requested Applicant to move the shed.

[17] The Board then heard from the Applicant, Ms. Angela Gauthier.

[18] Ms. Gauthier advised the shed has been at its present location for over 20 years and was moved in the past to be located on the Site. She believes the shed does not affect the enjoyment and use of Lot 2. Further she was attempting to comply with condition 2 of the Development Permit but wet weather conditions and no access to the shed from Lot 2 impeded these efforts. Ms. Gauthier believes the purpose of the Real Property Report is to confirm the placement of the structures on Lot 2 and to show encroachments of the Lot 2 structures on adjacent property.

[19] In response to specific questions asked by the Board members Ms. Gauthier advised she believes the shed was half the size when it was moved previously, the shed is on blocks, the shed will probably be destroyed by moving due to its size, and there has no need to go behind the shed as they can rectify the encroachment from the shed roof without having to go on Lot 2.

[20] Following the questioning of Ms. Gauthier, the Chair asked if there was anyone else wishing to speak in support of the application and opposed to the appeal. No one came forward.

[21] The Chair called on Ms. Gauthier for any final submissions from the Applicant.

[22] Ms. Gauthier does not understand why the 1 m side yard setback for the shed would make a difference considering the potential hardship involved with complying with a 1 m (3.2 ft.) setback, and that she could address the shed encroachment with any new owners of Lot 2 in the future.

[23] The Chair called on Mr. Zelych for any final submissions from the Appellant.

[24] Mr. Zelych advised the shed is on railway ties and cannot be moved, however, a professional carpenter could easily make the modifications to the shed to rectify the encroachment issue. Further he would agree to a 1 m (3.2 ft.) side yard setback for the shed and would allow Lot 2 access to the shed to rectify the encroachment if a 1 m (3.2 ft.) setback is created between the property boundary of Lot 2 and the shed.

## **DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

[25] The Board upholds the Appeal and varies the Development Permit for an accessory building side yard variance for an existing shed from 3 m (10.0 ft.) to 1 m (3.2 ft.) subject to the conditions numbered 1 through 7 set out below.

### CONDITIONS

1. The development shall conform to the submitted plans and shall not be moved, altered or enlarged except where authorized or directed through this permit approval.
2. The shed shall comply with the 1 m (3.2 ft.) side yard setback no later than September 26<sup>th</sup>, 2016.
3. The accessory building shall be finished and sided in a manner that is visually compatible and harmonious with the other structures located on the parcel.
4. All development shall be landscaped in a manner to prevent any surface run-off onto adjacent properties.
5. The applicant/landowner shall remove all garbage and waste at his/her own expense and keep the site in a neat and orderly manner.
6. The Applicant is responsible for obtaining any building and safety codes permits which may be required. Permits must be obtained from Parkland County.
7. Failure to comply with the conditions of this permit may result in the permit being cancelled, suspended or modified.

### **FINDINGS OF FACT**

[26] The Site is located at Plan 3984MC, Block 1, Lot 1, W5M- 2-52-9 NE, Municipal Address: 1, 2307 Township Road 522.

[27] The Site is identified as Fringe Area Development on Map 2 in Parkland County Municipal Development Plan Bylaw 37-2007.

[28] The Site is included in the Jackfish Lake Area Structure Plan.

[29] The Site is zoned LSR – Lakeshore Residential District in Parkland County Land Use Bylaw 20-2009, as amended.

[30] The minimum side yard setback for accessory buildings on internal parcels in the LSR District is 3.0 m (10.0 ft.).

[31] Section 11.1 of Land Use Bylaw 20-2009 directs that accessory buildings are a permitted use in all districts unless varied in this bylaw.

[32] Section 16.11 of Land Use Bylaw 20-2009 outlines the criteria to apply when considering a discretionary variance to the regulations in this bylaw.

[33] The Real Property Report from Hagen Surveys (1982) Ltd., dated January 21, 2016, was used to determine the encroachment of the shed on Lot 2.

[34] The shed is 3.1 m (10.0 ft.) by 7.8 m (25.6 ft.) in size and encroaches 0.32 m (1.05 ft.) onto Lot 2. The shed eaves encroach 0.30 m (0.98 ft.) and a portion of the sheds southwest wall encroaches 0.02 m (0.07 ft.) onto Lot 2.

[35] Water from the shed roof with a 0 m (0.0 ft.) side yard setback could drain onto adjacent property.

[36] A 0 m (0.0 ft.) side yard setback for the shed will require the Applicant to use Lot 2 to resolve the encroachment.

[37] Previous attempts to resolve the encroachment of the shed on Lot 2 required the Applicant to access the shed from Lot 2.

[38] A 1 m (3.2 ft.) side yard setback for the shed will allow the Applicant to access the shed from Lot 1.

## **REASONS**

[39] The Board notes that its jurisdiction is found in section 687(3) of the Municipal Government Act. In making this decision, the Board has examined the provisions of the County's Land Use Bylaw ("LUB"), and has noted the County's Municipal Development Plan and the Jackfish Lake Area Structure Plan, as referenced in the Development Authority's Report. The Board has also considered the oral and written submissions made by the Appellant, parties in support of the appeal, the Applicant, and the Development Authority.

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

*(a) must act in accordance with any applicable ALSA regional plan;*

*(a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;*

- (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.*

## **Nature of Use**

[40] The use of a variance to the minimum for side yard setback for accessory buildings on internal parcels is discretionary in the Lakeshore Residential District (LSR) zone. Therefore, the Board must assess the compatibility of the variance applied for with the neighbouring uses.

[41] The Appellant questioned the compatibility of the side yard setback variance and shed encroachment on the impact the variance and encroachment has on their use and enjoyment of their property.

[42] The Board has considered this concern.

## **Compatibility**

[43] In relation to compatibility, the Board notes that the shed has existed in its present location for approximately 20 years, is screened by vegetation and accessory buildings located on Lot 2, and is accessory to a permitted use. The Board heard from the Development Authority and the Applicant, and accepts this as a fact.

[44] The Board has reviewed the evidence submitted by the Appellant and notes that the Real Property Report determines the shed encroaches 0.32 m (1.05 ft.) onto Lot 2.

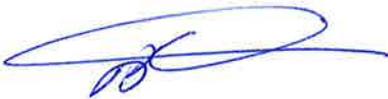
[45] The Board accepts that the shed encroaches 0.32 m (1.05 ft.) onto Lot 2 and notes that the difference between the existing shed setbacks versus 1 m (3.2 ft.) side yard setback would be indistinguishable, however, a 1 m (3.2 ft.) side yard setback will allow the Applicant to access the shed from Lot 1, will resolve the potential for water from the shed roof to drain onto Lot 2, and resolve the encroachment of the shed on Lot 2.

[46] The Board prefers the evidence of the Development Authority and Appellant. This evidence reflects their experiences and speaks directly to the impact that the variance and encroachment has upon the neighbourhood. The Board prefers this evidence as reflecting the actual conditions and impacts of the variance and encroachment on the neighbourhood, rather than the information submitted by the Applicant.

[47] The Board finds that the side yard setback variance from 3 m (10.0 ft.) to 1 m (3.2 ft.) will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of the neighbourhood as the shed is a permitted use in the LSR District and is screened by vegetation and accessory buildings located on Lot 2.

[48] For the above reasons, the Board upholds the appeal and varies the development permit with conditions.

Issued this 28<sup>th</sup> day of July, 2016 for the Parkland County Subdivision and Development Appeal Board.



  
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Tracey Melnyk, 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, R.S.A. 2000, c.M-26. This section requires an application for leave to be filed with the Court of Appeal of Alberta within 30 days of receipt of this decision.*

**APPENDIX "A"**  
REPRESENTATIONS

**PERSONS APPEARING**

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1. Mr. Craig Thomas, Development Planning Supervisor
2. Ms. Kim Kozak, Assistant Development Officer
3. Mr. Steve Zelych, Appellant
4. Ms. Angela Gauthier, Applicant
5. Ms. Freda Patterson, In Support of the Appeal

**APPENDIX "B"**

DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

Exhibit	Description	Date
1.	Table of Contents	July 20, 2016
2.	Agenda	July 20, 2016
3.	SDAB Report	July 20, 2016
4.	Notice of Appeal	June 30, 2016
5.	Administration Report	July 20, 2016
6.	Submission of Appellant	July 14, 2016
7.	Submission of the Applicant	July 19, 2016
8.	Additional Materials (Development officer report)	July 21, 2016
9.	Additional Material (Appellant)	July 25, 2016