SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY

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HEARING DATE: November 5, 2018
FILE NO.: 18-D-371

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 application made by Denis O'Connor (the "Applicant") for Accessory Buildings (12'X16' shed) at Lot 10, Block 1, Plan 1024439 Park Lane Estates, SE-14-53-26-W4, Municipal Address 10, 26107 TWP RD 532A (the "Site").

[2] Denis O'Connor appealed condition #1 of development permit 18-D-371 (the "Development Permit").

PRELIMINARY MATTERS

A. Board Members

[3] At the start of the hearing, the Board asked if anyone had an objection to the panel hearing the appeal. There were no objections raised regarding the panel members.

B. Exhibits

[4] The Board marked the exhibits as set out at the end of this decision. There were no further documents submitted for the Board's consideration

C. Miscellaneous

[5] A preliminary matter in regard to whether the appeal was filed in time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

[6] The decision of the Development Authority is dated August 31, 2018. Mr. O'Connor filed his appeal on September 25, 2018.

[7] In response to Board questions, Mr. O'Connor stated that he was working out of town for a month at the time the Development Authority made its decision. He did not understand that he had one month to file his appeal. He returned to his residence on September 24 and filed his appeal on September 25, 2018.

[8] The Development Authority did not make any submissions about the timing of the appeal.

[9] The Board indicated that it would hear the merits of the appeal and issue its decision on the preliminary matter following its hearing of the entire matter.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[10] The appeal was filed in time.

[11] The appeal is granted. The Board varies condition #1 of the Development Permit to permit the placement of the shed with a one meter side yard. Condition #1 is revised as follows:

> Condition #1 The proposed development shall conform to the stamped approved option two site plan and shall not be moved, altered or enlarged except where authorized or directed through this permit approval.

[12] All other conditions of the Development Permit are affirmed.

SUMMARY OF HEARING

[13] 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

[14] The Site is located within the Country Residential Estate District. The shed is an accessory use to a single detached dwelling which is a permitted use under section 5.3 of Land Use Bylaw 2017-18 ("LUB"). The Site is a 0.51 acre lot in the Parklane Estates subdivision. The Site has other lots adjacent to it on the north, east and west sides. The internal subdivision road is on the south side of the Site.

[15] The development permit application was made August 27, 2018. Mr. O'Connor submitted two site plans with the application. The first plan shows the location of the shed meeting the three meter side yard. The second plan shows the location of shed with a 1 meter side yard.

[16] The Development Authority approved the Development Permit with conditions on August 31, 2018. The approved drawing showed the shed as being located so as to permit a three meter side yard. Condition #1 provided that the proposed development must conform to the stamped approved option one site plan and shall not be moved, altered or enlarged, except where authorized or directed through this permit approval.

[17] The Development Authority submitted that the proposed use was generally consistent with the Big Lake Area Are Structure Plan (Bylaw 17-91) because it meets the utilization of appropriate design principles and development setback standards of the general development policies, and complies with the Municipal Development Plan (Bylaw 2017-14), in particular section 7.0 (Rural Communities and Housing) because it meets the objective for the diverse needs of residents.

[18] The Development Authority indicated that the applicant requested a variance to gain more green space, which was not an adequate reason to allow for a 1 meter side yard setback (a 2 meter variance). Section 16.11 of the Land Use Bylaw grants the Development Authority the authority to issue a variance upon consideration of the general purpose and intent of the land use district and the underlying planning objective of the regulation to be varied, relaxed or waived. There was no planning justification for the requested variance. The trees referenced by the Applicant were recently planted and could be relocated.

[19] In response to Board questions, the Development Authority indicated that a future resident of the neighbouring property could build a shed closer than three meters to the property line provided that there safety features to the building. The reason for the three meter setback was for safety reasons under the Safety Codes Act. If the variance were granted, the neighbour may be affected in the location of his shed. If a shed were three meters from the property line, there would not need to be any additional safety features.

Appellant Denis O'Connor

[20] Mr. O'Connor bought the Site in January 2017. He always planned to put a garden shed in the backyard. He stated that he lived in Edmonton for many years, and the set back in Edmonton is one meter, which is what he wanted for the shed at the Site. He felt that safety was enhanced by having the shed further away from his fire pit. He had not poured the concrete foundation for the shed because he was waiting for the location to be approved. He also indicated that the variance from a three meter side yard to a one meter side yard would reduce the wasted space between the shed and fence. His neighbour stores his materials in his garage and the neighbor has no plans to build a shed. Mr. O'Connor stated that he has noted other sheds in the County located one meter from the property lines.

[21] He stated that he put his fence inside the property line, so that the shed would be more than one meter from the property line. The shed is located four meters from the rear property line due to the pre-existing trees located there.

FINDINGS OF FACT

[22] The Site is located at Lot 10, Block 1, Plan 1024439 Park Lane Estates, SE-14-53-26-W4, Municipal Address 10, 26107 TWP RD 532A. The proposed development is located in the Acheson Industrial Park.

[23] The Site is zoned Country Residential Estate District.

[24] The shed is an accessory building to a permitted use in the Country Residential Estate District.

[25] The Appellant is an affected person.

[26] The appeal was filed in time.

[27] 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 parcels of land,

REASONS

Jurisdiction

[28] The first question the Board has to address is whether the appeal was filed in time. Since Mr. O'Connor was the applicant, the time within which his appeal must be filed is found in section 686(1)(a)(i)(A):

> **686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board
>
> (a) in the case of an appeal made by a person referred to in section 685(1)
>
> (i) with respect to an application for a development permit,
>
> (A) within 21 days after the date on which the written decision is given under section 642, or

[29] Section 642(3) states:

> **(3)** A decision of a development authority on an application for a development permit must be in writing, and a copy of the decision, together with a written notice specifying the date on which the written decision was **given** and containing any other information required by the regulations, **must be given or sent to the applicant on the same day the written decision is given**. (emphasis added)

[30] In making this decision, the Board is mindful that its decision affects the appeal rights of the Appellant. The correlation of the wording between the two sections is not clear. The Board notes that the current approach to statutory interpretation is to use a purposive approach. In making its decision, the Board is weighing the competing interests of limiting the time for appeal with having the appellant know about the decision before his appeal rights are triggered.

[31] The Board notes that section 686 requires the appeal to be filed within 21 days after the date on which the written decision is "given" under section 642. The question is what does the word "given" in section 642 mean because the word "given" is used in two different contexts within section 642(3).

[32] The first use of “given” in section 642(3) requires the date on which the decision was “given” to be specified. The Board interprets the first use of the word “given” to mean “made”. In this context, the Development Permit states that the date of the decision is August 31, 2018.

[33] However, the word given is used again:

> a copy of the decision, together with a written notice specifying the date on which the written decision was **given** … must be **given** or sent to the applicant on the same day the written decision is **given**

[34] The meaning of the second appearance of the word “given” is less clear. The Board interprets the word “given” to mean “given to the applicant”, although the mechanism of the “giving” is not specified. The work “given” here does not mean the date of the decision, but the date of delivery of the decision to the Applicant. The Board notes that section 642(3) also permits the Development Authority to send the decision to the applicant, which is what occurred in this case.

[35] The Board is aware of section 2 and 3 of the Interpretation Act. Nothing in section 642(3) or section 686 excludes the application of the provisions of the Interpretation Act.

> **Application to all enactments**
> 2 This Act applies to every enactment whether enacted before or after the commencement of this Act.
>
> **Extent of application**
> 3(1) This Act applies to the interpretation of every enactment except to the extent that a contrary intention appears in this Act or the enactment.
>
> (2) The provisions of this Act apply to the interpretation of this Act except to the extent that a contrary intention appears in this Act.
>
> (3) Nothing in this Act excludes the application to an enactment of a rule of construction applicable to it and not inconsistent with this Act.

[36] Section 642(3) permits the decision to be sent. The Board finds in this case that the decision was sent on August 31, 2018. Section 23 of the Interpretation Act provides for deemed service 7 days from mailing. Therefore, receipt is deemed to be September 7. The appeal period expired September 28, and therefore the appeal is in time.

Merits of the Appeal

[37] 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 as well as consider the oral and written submissions made by the Development Authority, the Appellants and the Applicant.

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 any applicable land use policies;

(a.2) subject to section 638, must comply with any applicable statutory plans;

(a.3) subject to clause (d), must comply with any 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.

Affected Persons

[38] The Board notes that the only speaker was the applicant who is also the appellant. Since Mr. O'Connor is the applicant for the permit, he is affected by the appeal.

Statutory Plans

[39] The Board heard submissions from the Development Authority that the proposed use was generally consistent with the relevant statutory documents as defined in the MGA. There was no evidence to contradict the submissions of the Development Authority on this point. The only evidence before the Board was that the development complied with the statutory plans. Therefore, the Board finds the proposed development complies with the Municipal Development Plan and the Area Structure Plan, as outlined in the Development Authority's submissions.

Land Use District

[40] The Site is zoned as County Residential Estates District (Land Use Bylaw section 5.3).

Nature of Use

[41] The shed is accessory to a single detached dwelling, which is a permitted use. Therefore, the Board finds the use of the shed is a permitted accessory use.

[42] The only question for the Board is whether it should approve the requested variance from a three meter side yard to a one meter side yard.

[43] The Board notes the authority of the Development Officer to vary regulations is found in section 16.11 of the County's Land Use Bylaw. However, the Board's authority for variance is found in section 687(3)(d), as set out above. Provided there is no undue interference with the amenities of the neighbourhood, or no material interference with or affect on the use, enjoyment or value of neighbouring parcels of land, the Board may vary the regulations (but the Board cannot vary use). In this case, the abutting neighbour where the shed is to be placed has sent a letter to the Board that he has no objection to the placement of the shed one meter from the property line, rather than the three meters required by the Land Use Bylaw (page 33/269).

[44] No other neighbours made submissions to the Board, either written or oral. The Development Authority indicated that the neighbour could put a shed on his property without any building adjustments, provided the shed had a three meter side yard. Therefore, the Board finds there is no evidence of any impact to the neighbour, particularly in light of the neighbour's consent. As a result, the Board is prepared to exercise its variance power and to reduce the size of the side yard from three meters to one meter.

[45] The Board notes that the Development Authority requested that the Board notify all neighbours about the variance. The Board declines to do so. The neighbours were notified of the appeal hearing before the Board, and none showed up to object. The Board sees no reason to provide notice to them when they did not express any concerns.

[46] Issued this 15th day of November, 2018 for the Parkland County Subdivision and Development Appeal Board

Christine Beveridge, SDAB Clerk
Dylan Smith, 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.	Kim Kozak, Development Officer
2.	Denis O'Connor, Appellant

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

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda	November 1, 2018	N/A
2.	Notice of Appeal	September 25, 2018	7-9
3.	Submission of the Development Authority	October 29, 2018	10-31
4.	Submission of the Appellant	October 14, 2018	32-111