

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
PARKLAND COUNTY**

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HEARING DATE: January 14, 2019  
FILE NO.: 18-D-459

**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 Heinz Wichmann (the "Applicant") to change the use of an existing accessory building to a single detached dwelling with a side yard setback variance at Lot 12, Block 2, Plan 7821514, 12-50410 Range Road 275, Parkland County (the "Site"). The side yard setback variance is from 6 metres (19.68 feet) to 3 metres (9.84 feet).

[2] Tim and Wendy Pierce appealed the issuance of development permit 18-D-459 (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.

**C. Miscellaneous**

[5] 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 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**

[7] The Board denies the appeal. The Development Permit has been varied and the Board has imposed additional conditions. The Development Permit is issued subject to the following conditions:

- a. The use of the accessory building as a single detached dwelling is approved for a two year period starting on the date the Board's decision is issued to the Applicant. After the expiry of the two year period, the accessory building cannot be used as a single detached dwelling.
- b. The Applicant must cover the window in the proposed dwelling facing 11-50410 Range Road 275 with permanent siding consistent with the siding of the proposed dwelling within 30 days from the date of the issuance of this decision.
- c. The proposed development shall conform to the stamped approved plans and shall not be moved, altered or enlarged except where authorized or directed through this permit approval.
- d. The exterior of the single detached dwelling shall be finished in the manner shown on the submitted drawings.
- e. The Applicant shall landscape the development in a manner to prevent any surface run-off onto adjacent properties.
- f. The Applicant must direct all drainage from the proposed single detached dwelling, including downspouts, away from 11-50410 Range Road 275.
- g. The Applicant shall remove all garbage and waste at its own expense and keep the site in a neat and orderly manner.
- h. The Applicant must complete landscaping of the area surrounding the proposed single detached dwelling, including the landscaping required by condition e) and f) by September 30, 2019.
- i. 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.
- j. Failure to comply with the conditions of this permit may result in the permit being cancelled and or revoked.

### **SUMMARY OF HEARING**

[8] 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**

[9] The Site is located within the Country Residential (CR) District.

[10] In 2017, the Development Authority approved a dwelling and accessory building on the Site through Development Permits 17-D-294 and 17-D-293, respectively. The Applicant constructed the accessory building prior to constructing the dwelling. Parkland County became aware the Applicant and his family were residing in the accessory building. Parkland County

informed the Applicant that the accessory building was not approved as a dwelling, single detached.

[11] The Applicant submitted a development permit application to change the use of the accessory building to a single detached dwelling and for a side yard setback variance.

[12] The Development Authority issued the Development Permit subject to conditions on November 5, 2018. The development permit application proposed to change the use of an accessory building to a dwelling with a side yard setback variance located at Lot 12, Block 2, Plan 7821514 Honey Vale Acres, SE-30-50-27-W4 Municipal Address 12, 50410 Range Road 275, Parkland County. The Development Authority imposed the following conditions:

- a. The proposed development shall conform to the stamped approved plans and shall not be moved, altered or enlarged except where authorized or directed through this permit approval.
- b. The exterior of the single detached dwelling shall be finished in the manner shown on the submitted drawings.
- c. All development shall be landscaped in a manner to prevent any surface run-off onto adjacent properties.
- d. The applicant shall remove all garbage and waste at their own expense and keep the site in a neat and orderly manner.
- e. 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.
- f. Failure to comply with the conditions of the Development Permit may result in the permit being cancelled and or revoked.

[13] The Development Authority determined that the proposed change in use (as conditionally approved) was appropriate for Site and the surrounding area, based on the following considerations:

- a. The proposed dwelling is over 12.19 metres from the adjacent neighbour's dwelling.
- b. Many large mature trees are located between both dwellings.
- c. The design and character of the proposed dwelling is compatible with other dwellings in the area as the exterior material is of colored metal with cultured stone.

- d. A single detached dwelling is consistent with the Country Residential (CR) District as a dwelling is allowed on a parcel with development and building permit approvals.

[14] Based on the above considerations, the Development Authority deemed the location of the proposed dwelling would not unduly interfere with the neighbouring properties.

[15] Therefore, the Development Authority approved the proposed change in use subject to conditions (Exhibit 3, Attachment A).

[16] In response to questions from the Board, the Development Authority explained that that the required setbacks from the property line in the CR district are 3 metres for an accessory building and 6 metres for a dwelling. The Development Authority further explained that the Development Permit runs with the land and is not dependent on who occupies the dwelling or owns the Site.

[17] The Development Authority stated it could not comment on the propane tank or conversion of the Site to natural gas as that was regulated under the *Safety Codes Act*.

[18] The Development Authority stated that in making its decision it took into account that trees would be removed on the Site to build the dwelling. It considered both the trees on the Site and the trees on the adjacent property to come to the conclusion that there were large mature trees between the two dwellings.

### **Appellants – Wendy and Tim Pierce**

[19] Mr. Pierce stated that his family has lived on the adjacent property, 11-50410 Range Road 275 (the "Pierce Property") since July of 2016. They purchased this property due to the location near the river, that it was an acreage and had country home appeal.

[20] Mr. Pierce stated that he has very serious privacy concerns due to the close location of the proposed dwelling to the Pierce family residence. The proposed dwelling is directly adjacent to the Pierce residence.

[21] Mr. Pierce raised concerns in respect of the approval of the change in use as he was not consulted. He expressed concerns that the Development Authority reached a subjective conclusion – that the change in use did not materially interfere with the neighbour's enjoyment – without consulting him.

[22] In the subdivision of Honey Vale Acres there are no properties which look like the proposed dwelling. All the residences are located in the middle of the parcel with at least 30 to 40 feet separating the residences.

[23] The Development Authority approval of the Development Permit was based on a 2017 photograph which showed a large swath of trees. Mr. Pierce noted that the trees on the Site between the proposed dwelling and the Pierce residence have been removed by the Applicant. The only trees remaining between the two dwellings are located on the Pierce Property.

[24] Mr. Pierce included photos which showed the visible insulation on the proposed dwelling and that the propane tank servicing the dwelling was visible from the Pierce Property. The propane tank is unprotected for 180 degrees.

[25] Mr. Pierce is concerned about the effect of the drainage from the proposed dwelling onto his property. Mr. Pierce submitted there was a two foot drop from the proposed dwelling and the Pierce Property. There is no vegetation on the ground between the proposed dwelling and the property line so water drains directly onto the Pierce Property. The down spout on the proposed dwelling has been placed in such a way as to drain directly onto the Pierce Property.

[26] The Development Permit notes that the site is environmentally significant area and that a buffer of vegetation should be maintained. Mr. Pierce submits that there is not a blade of grass left in the southwest corner of the Site. Mr. Pierce questions the power of the recommendations in the Development Permit as the area has been stripped of vegetation. He further notes that the proposed dwelling has outside lights which are visible from second story bedroom of the Pierce residence.

[27] In response to the Applicant's statement that the proposed dwelling was placed in a specific area due to the septic field on the Pierce Property, Mr. Pierce submitted that the septic field is a grassy hump 30 feet from the property line. There was no need to locate a residence away from the septic field.

[28] Mr. Pierce stated that one of the conditions of the Development Permit was for the Site to be kept in a neat and tidy condition and the Applicant has not complied with this condition. There were three Sea-Cans on the Site and Mr. Pierce has been raising concerns about these with Parkland County since June 2018 without anything being done. There are 4 RV/trailer units, multiple trucks and vehicles, two boats, various sheds in poor condition, various flat trailers with industrial style tanks and piles of building materials on the Site.

[29] Mr. Pierce submitted that the proposed dwelling is an eyesore and monstrosity and is in no way a dwelling.

[30] Mr. Pierce is concerned that despite the Applicant's wife's health problems, if the proposed dwelling is approved, then there is nothing stopping who can move into the proposed dwelling or if it is leased out.

[31] Ms. Pierce raised concerns regarding the window in the proposed dwelling which is directly adjacent to a window in the Pierce residence. That is her teenage daughter's bedroom window and this is a significant impact on her privacy. The Pierce residence is one and a third acres and that on a property of this size, windows between residences should not be adjacent.

[32] The proposed dwelling already affects the Pierce's use of their property in its current use as an accessory building. If the use is changed to a dwelling, it will dramatically affect their lifestyle.

[33] The 3 metre setback is not reasonable. Ms. Pierce submitted that the 6 metre setback is there to protect everyone.

[34] Ms. Pierce stated that the value of the Pierce Property has changed as a result of the proposed dwelling.

[35] In response to questions from the Board, Ms. Pierce stated that the impact on value of the Pierce Property comes from conversations they have had with their neighbors. Their neighbors believe that the proposed dwelling is on the Pierce's property as it is so close to their residence and comment that the Pierce's are living beside a junkyard.

### **Applicant – Heinz Wichmann**

[36] Mr. Wichmann stated that he had originally intended to build the accessory building and a dwelling. Their contractor was supposed to finish by October 31, 2017 but by May 2018 there was still no bathroom or floor for which Mr. Wichmann had already paid. The Wichmann family had sold their house and were required to be out of their house by June 2018. They moved their belongings into Sea-Cans and moved into the accessory building. Mr. Wichmann's wife has health issues which have created difficulties for the family. They applied for a development permit to use the accessory building as a dwelling until they were able to build the intended residence.

[37] Mr. Wichmann did not intend the accessory building to be used as a residence. He stated that the purpose of the accessory building was to separate the intended residence from the Pierce Residence and give both residences privacy. Mr. Wichmann did not want to build the intended dwelling to the front of the lot as then it would face the septic mound on the Pierce Property.

[38] Mr. Wichmann stated that there are three Sea-Cans on the Site. Two of these are mostly empty and sold. They should be moved by spring of 2019. He has moved one Sea-Can and construction materials to the bush so that it is not visible from the Pierce Property. Mr. Wichmann is also selling the motorhome and one of the fifth wheel trailers on the Site.

[39] Mr. Wichmann submitted the propane tank supplying heat to the dwelling is protected by 2 large trees. The connection to the propane tank was done according to plumbing code and approved by County inspectors.

[40] There are other lots in the Honey Vale Acres subdivision with accessory buildings. Residences in Honey Vale Acres are not located close together because each house has a vacant lot on either side. As these lots are developed, there will be residences located closer together.

[41] Mr. Wichmann stated that the proposed dwelling has good curb appeal. The building has a stone front using all new materials.

[42] The proposed dwelling has a 2 foot overhang and 5 inch eaves troughs which tie into a downspout to the back of the proposed dwelling and are drained by 20 inch accordion pipes which drain to the back and centre of the Site.

[43] Mr. Wichmann submitted that the landscaping surrounding the proposed dwelling is not complete but he anticipates the landscaping with trees being completed this summer. The landscaping will cover up the insulation which is visible on the proposed dwelling. The trees in the back corner of the Site were removed to place a survey post for measuring purposes.

[44] Mr. Wichmann stated that there is one window on the side of the proposed dwelling which is offset to the windows of the Pierce Residence. He offered to frame the window and cover it with permanent siding to address the privacy concerns.

[45] In response to the questions from the Board, the Applicant stated that he would screw sheet metal over the window on the proposed dwelling facing the Pierce Property. This would be a semi-permanent fixture.

[46] The Board asked when the intended dwelling would be built. Mr. Wichmann stated that due to his wife's health issues he could not provide a definitive time frame for the intended dwelling to be built.

## **FINDINGS OF FACT**

[47] The Site is located at Lot 12, Block 2, Plan 7821514, 12-50410 Range Road 275, Parkland County. The proposed development is located in the Honey Vale Acres subdivision.

[48] The Site is zoned County Residential (CR) District.

[49] The Appellants are affected persons.

[50] The Applicant is an affected person.

[51] With the additional conditions, the change in use from accessory building to single detached dwelling and the variance in the side yard setback 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**

[52] 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;*
- (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**

[53] The first question the Board must determine is whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to any of the speakers on the basis that they were not affected. However, the Board will address this issue in its reasons.

[54] The Applicant, Heinz Wichmann, is the applicant for the permit and as such is affected by the appeal.

[55] The Appellants, Tim and Wendy Pierce, live on the property adjacent to the Site and are such are affected by the appeal.

## **Statutory Plans**

[56] 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. None of the Appellants or the Applicant provided further 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 is generally consistent with the statutory plans as defined in the MGA.

## **Land Use District**

[57] The Site is zoned as Country Residential (CR) District.

## **Nature of Use**

[58] The use of a single detached dwelling is permitted use under the LUB. Therefore, the use itself has been determined by Parkland County Council to be an appropriate one on the Site. Therefore, the only question for the Board is whether it should approve the requested variance from a six meter side yard setback to a three meter side yard setback.

[59] The Board notes the authority of the Development Officer to vary regulations is found in section 16.11 of the LUB. However, the Board's authority for variance is found in section 687(3)(d). Provided there is no undue interference with the amenities of the neighbourhood, or no material interference with or effect on the use, enjoyment or value of neighbouring parcels of land, the Board may vary the regulations (but the Board cannot vary use).

[60] The proposed dwelling is an existing accessory building on the Site. There are no changes to the exterior of the proposed dwelling. The proposed dwelling meets the required setback for an accessory building (3 metre) but requires a variance of the side yard setback requirements from 6 metres to 3 metres in order to be used as a single detached dwelling.

[61] In its submissions, the Development Authority stated that it considered the compatibility of the development and found that it was reasonably appropriate for the subject properties. The Board will consider the concerns raised in the hearing to assess whether to exercise its variance powers of the side yard setback.

[62] The Appellants raised the following concerns:

- a) Proximity and Privacy,
- b) Drainage,
- c) Aesthetics, and
- d) Environmental Impact.

[63] In making its decision, the Board has weighed the evidence put before it and understands the difficult position Mr. Wichmann has been put in as a result of his contractor's failure to construct the intended dwelling as well as the concerns of Mr. and Ms. Pierce who are the immediately adjacent neighbours to the proposed change in use.

## **Proximity and Privacy**

[64] The location of the structure did not require a variance when it was used as an accessory building. However, the setbacks under the LUB for a single detached dwelling are 6 m and not 3. The question before the Board are whether the proximity of the structure as a single detached dwelling causes an undue interference or material impact on the Pierce family.

[65] The Board notes that the distance between the proposed dwelling and the Pierce residence is 12.19 m. The Pierces did mention the proximity as a stand alone issue, but the Board heard no evidence that the proximity, in and of itself, would cause any interference with

the Pierce's use of the property. The Pierces did state that they were concerned about having a residence with a window facing the window in their daughter's bedroom. The variance requested is 3 m (or approximately 10 feet). Although there was no direct evidence about what could be seen with a distance shortened by 10 feet, the Board recognizes that there may be an impact due to the reduced set back distance. Therefore in order to address the concerns relating to privacy, the Board is imposing the condition that Mr. Wichmann cover the window facing the Pierce residence. Once the window is covered, it will not be possible to see the bedroom in the Pierce residence, which should address this concern.

## **Drainage**

[66] The Board heard concerns from the Pierce family that water from the Wichmann property drained onto their property. The Board notes condition three of the development permit that "All development shall be landscaped in a manner to prevent any surface run-off onto adjacent properties".

[67] To address the concerns in respect of drainage, the Board has imposed two conditions on the Applicant's development permit.

The Applicant shall landscape the development in a manner to prevent any surface run-off onto adjacent properties.

The Applicant must direct all drainage from the proposed single detached dwelling, including downspouts, away from 11-50410 Range Road 275.

[68] The Board is of the view that these conditions should address any impact from drainage of the proposed dwelling on the Pierce property.

## **Aesthetics**

[69] The proposed dwelling is an existing structure which has been developed in accordance with development permit 17-D-293. The Board accepts the evidence of the Development Authority and the Applicant that the design, character, and appearance of the structure compatible with other dwellings in the area. However, Mr. Pierce expressed concerns that the insulation on the proposed dwelling was visible and that there is no landscaping between the Pierce residence and the proposed dwelling. Mr. Wichmann stated that the visible insulation would be covered by the landscaping which he intended to install this year.

[70] The Board accepts the evidence of Mr. Wichmann that the landscaping will cover the insulation on the proposed dwelling and will mitigate the visual impact of the proposed dwelling. Therefore to address the aesthetics concerns raised, the Board has imposed a condition on the Applicant's development permit that the Applicant must complete landscaping for the proposed dwelling by September 30, 2019.

[71] The Board also hear that the Pierces were concerned about the overall aesthetic of the structure being permanently used as a dwelling. Mr. Wichmann indicated that the use of the building as a residence was to be temporary, until he could get a single family dwelling constructed on the Site. In order to address the Pierce's concern about a permanent residence

in what used to be a garage, the Board is imposing a condition that the structure can only be used as a dwelling for a two year period from the date of this decision. The Board is of the view that a two year period to use the structure as a dwelling balances the impact on the Pierces with the right of Mr. Wichmann to use his property and the fact that a single detached dwelling is a permitted use in the CR district.

**Environmental Impact**

[72] Mr. and Ms. Pierce have raised a number of other concerns regarding the condition of the Site, the environmental impact, the proposed dwellings size. These concerns do not relate to the change in use from an accessory building to a dwelling and were not related to the variance in the set back distance. As a result, the Board does not need to address them in this decision.

[73] The Board finds that the conditions that were imposed by the Development Authority in combination with the Board’s imposed conditions should address any impact on the neighbouring uses and with the conditions, there is no material impact on the amenities or material effect on the use or enjoyment of the neighbouring property.

[74] Issued this 25<sup>th</sup> day of January, 2019 for the Parkland County Subdivision and Development Appeal Board

  
 Barb Williams, Board Clerk, on behalf of  
 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. Tim Pierce, Appellant
3. Wendy Pierce, Appellant
4. Heinz Wichmann, Applicant

**APPENDIX “B”  
 DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:**

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda		
2.	Notice of Appeal	November 27, 2018	1-5
3.	Submission by Tim & Wendy Pierce	November 27, 2018	4-5

Exhibit	Description	Date	Pages
4.	Waiver Form – Wendy Pierce	December 3, 2018	6
5.	Waiver Form – Heinz Wichmann	December 8, 2018	7
6.	Submission of the Development Authority	December 21, 2018	8-25
7.	Submission by Applicant Heinz Wichmann	January 3, 2019	26-53
8.	Submission by Applicant Heinz Wichmann – Pictures of Property	January 3, 2019	54-82