

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: October 25, 2021
FILE NO.: 21-D-295

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 a Secondary Suite and Accessory Building for Gerald Ortlieb (the "Applicant") located at Lot 17, Block 2, Plan 8020551, Silver Bell Estates, SE-13-51-26-W4, municipally described as 6, 51214 RGE RD 260, Parkland County (the "Lands").

[2] On October 1, 2021, Barry and Kristy Russ (the "Appellants") appealed the development permit.

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on October 25, 2021 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. 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. There were no preliminary matters raised at the beginning of the hearing.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[8] The Board denies the appeal but varies the development permit issued by the Development Authority. The Board permits the proposed Secondary Suite as shown at page 16/65 to be constructed, but denies development approval for the Accessory Building (new attached garage). The Board confirms all of the conditions imposed by the Development Authority and notes specifically that the configuration of the Secondary Suite is to be as set out at page 19/65, and that the deck that is shown at page 16/95 is not authorized by this decision.

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

[10] The Lands are located at Lot 17, Block 2, Plan 8020551, Silver Bell Estates, SE-13-51-26-W4, municipally described as 6, 51214 RGE RD 260, Parkland County.

[11] The Lands are within the Country Residential Area of the County's Municipal Development Plan (Bylaw 2017-14) ("MDP") and the proposed development complies with Section 7.1.1. The Lands are also within the Prime Recreation/Tourism Area and the proposed development complies with Section 8.2 of the MDP. The Lands are subject to the Woodbend-Gramina Area Structure Plan ("ASP") and the proposed development complies with Section 4.5 of the ASP.

[12] The Development Authority received an application for a secondary suite and attached garage. The Development Authority determined that the proposed use met the definition of Secondary Suite and Accessory Buildings under the County's Land Use Bylaw ("LUB").

[13] The Development Authority approved the application on September 7, 2021.

[14] In making its decision, the Development Authority considered that Accessory Buildings are a permitted use and Secondary Suites are a discretionary use. The Development Authority noted that the two uses were approved under a single discretionary permit because the garage is attached to the secondary suite, and together they will form a single structure.

[15] The Development Authority reviewed section 12.16 of the LUB which sets out the requirements for a Secondary Suite. The Development Authority noted that the proposed development satisfied the requirements of section 12.16, with the exception of the maximum permissible floor area. The Development Authority issued a variance for the maximum floor area from 92 m² to 97 m², noting that the proposed structure had already been constructed off-

site, and alterations would be cost prohibitive. The Development Authority noted that the variance issued would not unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment, or value of neighbouring properties due to the configuration and location of the proposed structure.

[16] The Development Authority determined that the Accessory Building is located 3.5 metres from the property line, which is greater than the 3.0 metre setback requirement for Accessory Buildings. The Development Authority further determined that the Secondary Suite would be setback 10.21 metres from the property line, which is greater than the 6.0 metre setback requirement.

[17] With respect to the adjacent land use, the Development Authority was of the view that the proposed development is compatible with surrounding adjacent land uses, as the development is adjacent to similar residential lots to the east and west, and the accessory building will be located 3.5 metres from the adjacent edge of the parcel, further than the minimum regulated setback requirement.

[18] The Development Authority considered the following in support of the development permit application:

- a. The site plan;
- b. Floor plan showing a 97 square metre moved-on home with an attached garage to be constructed new on the site; and
- c. Elevation drawings of the proposed structures.

[19] In response to questions from the Board, the Development Authority advised as follows:

- a. A Garden Suite is a distinct additional dwelling on a parcel. The ability to have a Garden Suite is limited by the size of the parcel.
- b. There is a 92 m² maximum floor area requirement for a secondary suite in the LUB. The LUB defines "floor area" as:

FLOOR AREA means the greatest horizontal area of a building above grade within the outside surface of exterior walls or within the glass line of exterior walls and the centreline of fire walls but not including the floor areas of basements, attached garages, sheds, open porches or breezeways.

Therefore, the Development Authority did not consider the floor area of a basement or the proposed garage as part of its determination of the floor area of the Secondary Suite.

- c. In this application, no floor plan for a basement area was submitted or approved by the Development Authority. The Development Authority has only approved the main floor as part of the Secondary Suite.

Appellants Barry and Kristy Russ

[20] Barry and Kristy Russ live immediately east of the proposed development and filed the appeal. They noted that while they are not opposed to secondary suites generally, nor the Applicant's desire to have a Secondary Suite, they have significant concerns with the development as proposed.

[21] The Appellants identified 8 concerns with the development:

- a. Overall area of the development is too large. The Development Authority erred in assessing the size of the development.
- b. The proposed garage is not being used as an accessory to the main dwelling, rather it is proposed to be accessory to the Secondary Suite.
- c. The Bylaws are not clear as to whether a Secondary Suite may be built on a foundation. If there is a basement, then the basement should be added to the floor area of the proposed development.
- d. The proposed Secondary Suite is too large as compared to the principal dwelling on the property. The Secondary Suite should be clearly incidental to the principal dwelling.
- e. The proposed development will give the impression of two stand-alone residences. An outside observer may assume that there were two residences on skinny lots. The lot is already narrow.
- f. The Secondary Suite and the garage are, for all intents and purposes, one building. Therefore, the setback should be 6 metres from the property line. The proposed deck off the back of the garage will be only 3.5 metres from the edge of the property.
- g. It is unclear how water will be used and provided to the additional dwelling. The Appellants use a well, and an additional well could adversely affect their future water supply.
- h. The proposed development will obstruct their view and infringe on their privacy. The proposed development will overlook the Appellant's front yard. There is a significant elevation change between the lots, so the ground floor of the proposed development will be approximately in line with the 2nd story of the Appellant's home. The Appellants explained that they valued privacy, and it could cost thousands of dollars in landscaping to restore the privacy they have worked hard to establish.

[22] The Appellants argued that their interpretation of the bylaws is consistent with the intention of the bylaws: to provide neighbours the opportunity for input when a development is

discretionary. The Appellants noted that if the proposed development were in a different location, they would not have an objection to it.

Those speaking in favour of the Appeal - Randy Shantz

[23] Randy Shantz lives down the street to the west of the Applicant. He spoke in favour of the appeal.

[24] Mr. Shantz stated that in his view, the proposed development was a house with an attached garage, not a Secondary Suite. He noted that as a resident of the community, he was concerned that other people may be permitted to build similar suites, which could have an adverse effect on property values in the area.

[25] Mr. Shantz also questioned how the County could issue a development permit for a Garden Suite which is larger than the maximum square footage allowed by the LUB.

Applicant – Gerald Ortlieb

[26] The Applicant, Gerald Ortlieb, stated that he has worked hard to follow the County bylaws and that when necessary, he obtained variances which were approved by the Development Authority. He noted that the variances were relatively minor in nature.

[27] With respect to the Secondary Suite and the garage, he noted that the two buildings could be separated in order to be in strict compliance with the requirements if necessary. He stated that the first house has an attached garage.

[28] Mr. Ortlieb noted that there was a significant distance between his neighbour's home and proposed development, and that existing trees would block the majority of the proposed development from view. With respect to his neighbour's privacy, Mr. Ortlieb noted that no part of the development would change his relationship with his neighbours, and he would continue to respect their privacy, as he has for the last 30 years.

[29] Mr. Ortlieb stated that he has considered alternate placements for the proposed development on his parcel, but the proposed location is best as it allows for a sharing of utilities with the pre-existing structure. He noted that alternate building sites toward the back of his lot would actually be closer to his neighbour's home.

[30] In response to questions from the Board, Mr. Ortlieb confirmed that the size of the proposed Secondary Suite is approximately the same as the home currently on the parcel; however, the existing home is a two-story with a basement. He also noted that there is an attached garage on the existing home.

[31] Mr. Ortlieb further stated that he would truck water to the site, and that the proposed development would have a separate septic tank beside the driveway toward the main road to the south. He noted that he was not going to build the deck which is shown at page 16/65 of the Board's package.

FINDINGS OF FACT

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

[33] The Lands are located at Lot 17, Block 2, Plan 8020551, Silver Bell Estates, SE-13-51-26-W4, municipally described as 6, 51214 RGE RD 260, Parkland County.

[34] The Lands are located within the CR- Country Residential District.

[35] The Lands are 2.55 Acres, or 1.03 Hectares in area.

[36] The development as approved by the Board complies with the MDP and the ASP.

[37] The proposed development is a Secondary Suite and Accessory Building as defined within the LUB.

[38] Secondary Suite is a discretionary use in Country Residential Districts.

[39] Accessory Uses of other permitted uses such as Dwellings, Single Detached, is a discretionary use in Country Residential Districts as being accessory to the Secondary Suite.

[40] The Secondary Suite is compatible with the neighbouring uses.

[41] The Secondary Suite exceeds the floor area set out in the LUB by 5 m².

[42] The variance of 5 m² of floor area for the Secondary Suite does 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.

[43] The Accessory Building (garage) changes the nature of the Secondary Suite to a principal dwelling unit on the Lands.

[44] The Appellants, Barry and Kristy Russ, are affected persons.

[45] Randy Shantz is an affected person.

[46] The Applicant, Gerald Ortlib, is an affected person.

REASONS

Jurisdiction

[47] 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, the Appellants, the Applicant and those speaking in favour of the appeal.

- 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 (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

[48] 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 those making submissions to the Board. The Appellants live adjacent to the proposed development. Mr. Shantz lives just down the road from the proposed development. Due to their proximity to the proposed development, the Board finds The Appellants and Mr. Shantz to be affected.

[49] Because the Applicant's development permit is under appeal, the Applicant is also affected by this appeal.

Issues to be decided

[50] The Board must determine:

- a. Is the proposed development in compliance with the statutory plans?
- b. What is the nature of the use?
- c. If the nature of the use is Secondary Suite, is the use compatible with surrounding uses?

- d. Does the proposed development comply with the LUB regulations or should a variance be authorized?

Compliance with Statutory Plans

[51] The only information before the Board in regard to the County's MDP is the information from the Development Authority which indicates that the County's MDP applies (see page 7 of 65). The Lands are within both the Country Residential Area and are also within the Prime Recreation/Tourism Area of the MDP. There was no evidence or argument submitted which contradicted the Development Authority's submissions that the proposed development complies with the County's MDP. Therefore, the Board finds that the proposed development is in compliance with the MDP, specifically 7.1.3 which indicates that "[a] mix of land uses may be supported in Country Residential [...] Areas to support the creation of rural complete communities, and 7.1.4 which provides "The County promotes innovative housing forms to ensure the provision of a diversity of housing options and affordability levels to Parkland residents."

[52] The only information before the Board in regard to the County's ASP is the information from the Development Authority which indicates that the ASP applies to the lands, and that the Lands are in compliance with section 4.5. There was no evidence or argument submitted which contradicted the Development Authority's submissions that the proposed development complies with the ASP. Therefore, the Board finds that the proposed development is in compliance with the ASP.

[53] Having addressed the question of the proposed development's compliance with the County's statutory plans, the Board must continue its analysis. Compliance with the statutory plans is required, but does not address the entirety of the issues before the Board. The Board now turns to the nature of the use and the questions which flow from the Board's determination of use.

Nature of The Use

[54] The Board first notes that the Development Authority approved the two uses under a single discretionary permit because the Accessory Building is shown as attached to the second house and together they form a single structure.

[55] In conducting its analysis, the Board has considered the Development Authority's methodology. While there is some merit in considering both uses as part of a cohesive unit since the Applicant has submitted plans which show the garage as part of one structure, the Board will examine both uses.

[56] The Board notes that one of its first tasks is to determine what the nature of the use is, taking into account the submissions of the Development Authority and those providing submissions to the Board. If the Board concludes that the proposed development is a Secondary Suite, the use of Secondary Suite is discretionary in the Country Residential District and the Board can then move to an analysis of whether that use is compatible with neighbouring uses. If the Board concludes that the proposed development is not a Secondary

Suite, then the Board must determine what the use is, and whether that use is able to be located on the Lands.

[57] In conducting its review, the Board has focused on the County's LUB because this is the land use bylaw which governs the application. The Board notes that the Appellant has referenced land use bylaws from other jurisdictions. While those bylaws may also refer to secondary suites, those bylaws do not apply within the County and for that reason the Board has not taken into account the terms of those bylaws.

[58] The Board notes that the Development Authority identified part of the proposed development as a Secondary Suite. The definition of Secondary Suite is:

Secondary Suite means a development consisting of:

- a. an additional Dwelling Unit located within and Accessory to a Dwelling, Single Detached;
- b. a Garage Suite that is Accessory to a Dwelling, Single Detached; or
- c. a Garden Suite, that is Accessory to a Dwelling, Single Detached and located on a Parcel greater than 0.8 ha in area.

A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are separate from those of the principal on-site Dwelling Unit. A Secondary Suite shall have a separate entrance from the entrance of the principal Dwelling, either from a common indoor landing or directly into the Secondary Suite. This use does not include Boarding Houses.

[59] There is no question that the Applicant seeks development approval for another "living space" (dwelling unit) on the Lands because this is the clearly stated objective of the Applicant, and there was no evidence contrary to this position presented to the Board. In examining the definition of Secondary Suite, the Board's view is that the proposed development clearly cannot fall under a. of the definition because the additional dwelling unit is not located within the currently existing Dwelling Unit on the Lands.

[60] The Board has examined b. which references a "Garage Suite". Although the term is capitalized, it is not a defined term within the LUB. The Board interprets the term "Garage Suite" to mean a dwelling unit located within a garage. Since the plans show a separate building with an attached garage, the Board finds that the proposed use is not a "Garage Suite".

[61] The only remaining portion of the definition of Secondary Suite is c. which deals with "Garden Suite". As with the term "Garage Suite", the term "Garden Suite" is not defined within the LUB. In order to determine whether the dwelling portion of the development falls within the definition of "Garden Suite", the Board must examine the wording of the LUB.

[62] The relevant portions of the definition of Secondary Suite are:

...
a Garden Suite, that is Accessory to a Dwelling, Single Detached and located on a Parcel greater than 0.8 ha in area.

...

A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are separate from those of the principal on-site Dwelling Unit. A Secondary Suite shall have a separate entrance from the entrance of the principal Dwelling, either from a common indoor landing or directly into the Secondary Suite. This use does not include Boarding Houses.

- [63] To be considered to be a Garden Suite, the proposed development must:
- a. be accessory to a Dwelling, Single Detached;
 - b. be located on a Parcel greater than 0.8 ha in area;
 - c. have cooking facilities, food preparation, sleeping and sanitary facilities which are separate from those of the principal on-site Dwelling Unit;
 - d. have a separate entrance from the entrance of the principal Dwelling, either from a common indoor landing or directly into the Secondary Suite.
- [64] There was no dispute before the Board that:
- a. the proposed development was on a Parcel greater than 0.8 ha in size;
 - b. there will be cooking facilities, food preparation, sleeping and sanitary facilities separate from the first house; and
 - c. there would be a separate entrance to the second house.

The Board finds these items to be so as a matter of fact.

[65] Therefore, the only item which has to be discussed is whether the second dwelling is accessory to a Dwelling, Single Detached. There is no question that there is a pre-existing house on the Lands, which is a Dwelling, Single Detached.

Dwelling or Dwelling Unit means a building or a portion of a building containing one or more habitable rooms that constitute a self-contained living accommodation unit having sleeping, cooking and toilet facilities and intended as a permanent residence.

[66] The Board find that the first house meets the definition of Dwelling, and therefore meets a portion of the requirement to be a Secondary Suite. The LUB clearly recognizes that there can be two Dwelling Units on the Lands, provided one of them is a Secondary Suite.

[67] The real question which the Board must determine in order to conclude that the proposed development is a Secondary Suite is whether the second dwelling is Accessory to the first house.

[68] In the LUB, Accessory means:

Accessory means subordinate, incidental to, and exclusively devoted to a principal Use or principal Building.

[69] The principal use of the Lands is the first house – which is residential in nature. The Board considered the evidence presented by the Applicant that the second dwelling would be placed to allow for a sharing of utilities with the pre-existing structure, which the Board infers establishes a use exclusively devoted to the principal use. The Board notes that the evidence of

the Applicant is that due to the medical circumstances of his wife, they had to move out of their two story house and look to have a second dwelling which would permit her to have mobility. In considering this, the Board notes that one of the purposes of section 5.3 of the LUB (the CR District) is "to accommodate residential development that meets varied housing and lifestyle needs". In considering the evidence, the Board finds that the second dwelling accommodates this varied housing need.

[70] Based on the evidence provided, including that found at page 63/65 that the Applicant will use the Lands for multigenerational family use, the Board finds that the second dwelling is accessory to the first dwelling and thus falls within the definition of Secondary Suite. While a secondary suite may take many forms (a suite within an existing dwelling, a garage suite, or a garden suite) each of these forms share several common characteristics: facilities for cooking, food preparation, sleeping and sanitation; and a separate entrance. When the Board looks to the definition of a dwelling unit in the LUB, the common characteristics of Secondary Suites align with this definition. Therefore, in the Board's view, a parcel may have two dwellings provided that one is a Secondary Suite.

[71] The Board notes that the proposed Secondary Suite is smaller than the existing house (see page 16/65 which shows the outline of the existing house to that of the proposed house). The Board has also considered the interior layout of the Secondary Suite (see page 19/65). The Board notes that the proposed Secondary Suite has only one bedroom, which is indicative of a subordinate relationship between the original house and the proposed Secondary Suite.

[72] In considering the character of the use, the Board notes that the Secondary Suite and the Accessory Structure (garage) would look like one structure to the external observer. Since they are joined, the Board has considered the impact of the "attachment" of the Accessory Structure (garage) on the nature of the Secondary Suite. The Board notes the concern of the Appellant that when there is an attached garage to the Secondary Suite, the Secondary Suite loses its "subordinate" or incidental status to the primary dwelling. With a full sized garage as set out in the plans, the Board is of the view that the second dwelling is not subordinate to the original house, but rather becomes a principal dwelling in its own right. While the Board is prepared to accept the 97 m² dwelling by itself as a secondary dwelling (see the discussion below regarding the variance required), the Board finds as a fact that when the garage is attached to it, the nature of the second dwelling loses its character as a Secondary Suite. In the Board's view, the second dwelling with an attached garage cannot be distinguished from the original house on the Lands from a use perspective.

[73] The Board notes that under section 11.4 of the LUB, only one Dwelling shall be allowed on a Parcel smaller than 28.0 ha. This parcel is only 1.03 ha in size or 1/28 of the size of a parcel where the LUB has contemplated that a second principal dwelling can be permitted on a parcel. Although the Board notes that section 11.4 is a regulation, and therefore the Board could waive the regulation (provided that the test for a variance under section 687(3)(d) is met), the Board is not convinced on the evidence before it that having 2 principal dwellings meets the intention of the LUB, and specifically section 11.4. The lot in question is significantly smaller than the parcel size supporting two dwellings. The Lands are a narrow parcel, with trees at the end. Therefore, the view from the road on the south of the Lands would give the appearance of a denser parcel. The Lands and the neighbouring parcels are zoned CR, and the Board is of the view that having a second principal dwelling would be an undue interference

with the amenity of the neighbourhood, which the Board characterizes as the “country residential feeling” arising from not having significant density in the area. The Board is also concerned that permitting 2 principal dwelling units on the Lands may lead to a future application for subdivision. While that application is not before this Board, the Board believes that an approval for a second principal dwelling may have unintended consequences and such should be considered by the County as part of its creation and revision of the LUB.

[74] For the reasons set out above, the Board is not prepared to permit the Accessory Structure (garage). Although the Board notes that the Accessory Structure (garage) is a separate use and is discretionary use¹ the fact that it is connected to the Secondary Suite changes the nature of the use from a “stand alone use” to integrally connected to the Secondary Suite use. As a result, the Board is not prepared to grant the permit for the Accessory Structure (garage) as its connection to the Secondary Suite changes the character of the Secondary Suite. The Board’s findings might have been different had the Accessory Structure (garage) not been attached to the Secondary Suite. However, the Board makes its decision on the basis of the application before it.

[75] Since the Secondary Suite is a discretionary use, the Board must determine if it is compatible with the neighbouring uses. The Board notes that the Secondary Suite is a residential use in a CR district. The evidence is that the surrounding properties have dwellings on them. The Board finds this to be a significant factor in the determination of compatibility and notes that, subject to its review below, the fact that the Secondary Suite is a dwelling points to a compatibility of land use. It is difficult to see how a house is not compatible with other houses. The use of each dwelling is residential.

[2] However, the Board wishes to consider the Appellants’ concerns to determine whether those concerns impact on the Secondary Suite’s compatibility with the neighbouring uses.

[76] In order to assess the compatibility of the proposed development, the Board will consider the concerns raised by the Appellants, which are all factors of compatibility:

- a. impact on property value;
- b. impact on well water; and
- c. impacts on privacy and quiet enjoyment of property.

Property Values

[77] Both the Appellant and Mr. Shantz argued that that the Secondary Suite may have a negative impact on the property values in the neighborhood. However, neither provided expert

¹ The Board notes that section 5.3 does not have a section 5.3.2b or section 5.3.2c. Section 5.3 goes from section 5.3.2a to 5.3.2d. The reference within the “Accessory Uses” portion of section 5.3.2d and section 5.3.2e has created an ambiguity. Since the Board must provide an interpretation, the Board finds the references are a typographical error and the reference to:

section 5.3.2.b is meant to be section 5.3.2.d,
section 5.3.2.c is meant to be section 5.3.2.e
otherwise there would be no possible cross reference.

evidence or other hard evidence, aside from their assertion, about the impact on their property values.

[78] There is no independent evidence before the Board of any adverse impact on the property values of neighbouring parcels of the proposed development. In the absence of evidence about a decrease in property value, the Board does not accept the Appellants' statements as evidence of a decrease in property values. (see *Earth Sciences Inc (E.S.I. Resources Ltd.) v. Calgary (City)*, 1978 AltaSCAD 6). The Board noted the concerns, but in the absence of any evidence supporting the allegations of a decrease in property value, the Board is not prepared to find that there will be an impact on their property values. The Board finds that the allegations are not sufficient to support a finding of non-compatibility.

Water

[79] The Appellants raised a concern that if a second well was dug, it may have a detrimental effect on their existing well. The evidence of the Applicant was that he would truck in water to the Lands.

[80] The Board was not presented with any evidence that the aquifer from which the wells draw their water could not accommodate the use for the Secondary Suite. The Board finds that there was insufficient evidence for it to conclude that the proposed development will cause problems with the Appellants' well. Therefore, the Board concludes that water is not a sufficient ground to find an incompatibility of the use with the surrounding uses.

Impacts on Privacy and Quiet Enjoyment

[81] The Appellants' objected to the proposed development because of their concern about the impact that the Secondary Suite would have on their privacy and cause them to expend money to re-create the privacy that they previously had. In response, the Applicant indicated that nothing would change in relation to privacy and that existing trees would block the view from the proposed development to the Appellants' house.

[82] In considering the issue of privacy, the Board does not accept the concerns of privacy result in an incompatible use. The evidence is that the required side yard for the secondary suite is 6.0 m and the proposed side yard setback is 10.21 m. The size of the side yard from the second dwelling is sufficient to address the Appellant's concerns of privacy. Further, the Board accepts the evidence of the Applicant that there are trees on the site, and the Board notes the picture at page 16/65 showing the location of trees which provide screening between the two properties.

Compliance with LUB Regulations

[83] Secondary Suites are allowed if they are 92 m² or less. The size of the Secondary Suite here is 97 m². Thus, a variance of 5 m² is required.

[84] The Board heard argument about whether the basement area of the Secondary Suite should be considered as part of the floor area. The Board concludes that only the main floor need be considered as a result of the definition of Floor Area, set out below, which speaks to

the area of a building above grade. By definition, the basement is not counted in the calculation of floor area.

FLOOR AREA means the greatest horizontal area of a building above grade within the outside surface of exterior walls or within the glass line of exterior walls and the centreline of fire walls but not including the floor areas of basements, attached garages, sheds, open porches or breezeways.

[85] In order to grant the variance, the Board must assess the test for a variance set out in section 687(3)(d) which permits the Board to vary a regulation if in its opinion, the proposed development would 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. The Board notes that the three issues raised by the Appellants also can be considered the Appellants' arguments against the variance.

[86] As set out above, the Board notes that the Appellants' concerns regarding property values and well water are simply statements and there was insufficient evidence for the Board to base a determination that authorizing the variance of 5 m² would cause undue interference with the amenities or materially interfere with use, enjoyment or value of the neighboring properties.

[87] In relation to the Appellant's concerns of privacy, the Board notes that the LUB does authorize secondary suites on CR parcels. The question is whether the additional floor area would cause undue interference with the amenities, or material interference with use, enjoyment or value. While the Board recognizes that there is some impact from the additional floor area, the Board is of the view that the impact is not significant enough to deny the variance. The Secondary Suite will be set back 10.21 metres from the property line, which is greater than the 6.0 metre setback requirement. This increase in set back will address the impact on privacy.

[88] The Board notes that the plans at page 19/65 do not reflect a deck, although one is shown at page 16/65. The Appellant was concerned about the deck, but the Applicant advised that he was not going to build one. In light of the Applicant's comments, the Board confirms in its decision that the uses and plans as approved by the Board do not include the deck shown at page 16/65.

Conclusion

[89] For these reasons, the Board denies the appeal but varies the development permit issued by the Development Authority. The Board permits the proposed Secondary Suite as shown at page 16/65 to be constructed, but denies development approval for the Accessory Building (new attached garage). The Board confirms all of the conditions imposed by the Development Authority and notes specifically that the configuration of the Secondary Suite is to be as set out at page 19/65, and that the deck that is shown at page 16/95 is not authorized by this decision.

[90] Issued this 8th day of November, 2021 for the Parkland County Subdivision and Development Appeal Board.



Barb Williams, Clerk of the SDAB, on behalf of J. 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. R. Trovato, Development Authority
2. Barry and Kristy Russ
3. Randy Shantz
4. Gerald Ortlieb

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

October 25, 2021 Agenda Package			
Exhibit	Description	Date	Pages
1.	Agenda Coversheet	October 20, 2021	1
2.	Table of Contents	October 20, 2021	2
3.	Notice of Appeal – Barry & Kristy Russ	October 4, 2021	3-4
4.	Submission of the Development Authority	October 19, 2021	5-52
5.	Submission of the Appellant – Barry & Kristy Russ	October 19, 2021	53-61
6.	Submission of the Applicant – Gerald Ortlieb	October 18, 2021	61-65