

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: April 25, 2022
FILE NO.: 22-D-037

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "Development Authority") denied a development permit for a Recreational Unit, Park Model with attached Arizona Room located at Plan 1122441 Lot 328 (Phase 5 Trestle Creek), municipally described as Lot 501 – 53126 RR 70 Entwistle, AB, Parkland County (the "Lands"). The Applicant was Dale Kurta (the "Applicant").

[2] On March 25, 2022, Dale Kurta filed an appeal of the development permit refusal (the "Appellant").

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on April 25, 2022 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 which had been submitted in accordance with the Board's hearing submission dates. The Board marked those exhibits received prior to the hearing as set out at the end of this decision.

[6] During the hearing, the Board received additional photographs from the Appellant. There were no objections to the Board receiving these exhibits. The Board has marked the photographs as an exhibit as set out at the end of this decision.

C. Miscellaneous

[7] The appeal was filed in time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

[8] 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

[9] The Board allows the appeal and revokes the Development Authority's decision to refuse the development permit. The Board issues the development permit in accordance with the revised plans for the Park Model as submitted by the Appellant.

SUMMARY OF HEARING

[10] 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

[11] The Lands are located at 501 – 53126 Range Road 70, legally described as Plan 1122441, Unit 328 and is within the Trestle Creek Golf Resort, Entwistle, AB, Parkland County (the "Lands").

[12] The appellant, Dale Kurta, is appealing the decision of the Development Authority of Parkland County to refuse a development permit application made by the appellant for a Park Model with attached Arizona Room.

[13] The Development Authority reviewed the application and refused it on the grounds that it does not comply with Land Use Bylaw 2017-18 (the "Land Use Bylaw").

[14] The Development Authority submits that the refusal be upheld, and this appeal be dismissed.

[15] The Lands are located within the Bareland Recreational Resort District.

[16] The Lands are within a High Priority Landscape as outlined in Section 7.1.5 of the Municipal Development Plan ("MDP").

[17] The Lands are also within Prime Agricultural Area – Priority Area West as identified in Figure 9, Section 4.2 of the MDP.

[18] The Lands are within the Wabamun / Pembina Prime Recreation / Tourism Area as identified in Figure 11, Section 8.2 of the MDP. Section 8.2 supports a concentration of resort, tourism, recreation amenities and other supportive uses.

[19] The Lands are not subject to an Area Structure Plan.

[20] The Lands are within the regionally significant Sturgeon River Headwaters Environmentally Significant Area (“ESA”) as defined in the Environmental Conservation Master Plan. The Sturgeon River Headwaters ESA is considered to have a moderate Environmental Sensitivity with the presence of rare plants, potential for erosion, and groundwater contamination.

[21] The following items were submitted by the Applicant to the Development Authority in support of their application:

1. Site Plan
2. Floor Plans
3. Building Elevation Drawings
4. Cross Section

[22] The application for a Park Model with attached Arizona Room was received on February 11, 2022, deemed complete on February 28, 2022, and was refused on March 23, 2022.

[23] The proposed development was determined by the Development Authority not to meet the definition of a Recreational Unit, Park Model as per Section 20.3 of the Land Use Bylaw.

[24] Upon review of the application the Development Authority determined the Use Class to be Manufactured Home, Double Wide as defined in Section 20.3 of the Land Use Bylaw.

[25] The Development Authority determined the proposed development does not meet the standards of the listed definition for Recreational Unit, Park Model as per Section 20.3 of the Land Use Bylaw. The proposed Park Model is not constructed to stand as its own self-contained unit, requiring the addition of the Arizona Room in order to form a single unit. The elevation drawings included with the application show that the Park Model is constructed without a door and with a wall of the structure not completed in the area to be connected to the Arizona Room. The Park Model cannot stand on its own as a self-contained unit. The proposed development with the addition is not built on a single chassis.

[26] The Development Authority determined that the Arizona Room was exclusively devoted to the Park Model as per Sections 11.1.1 and 20.2 of the Land Use Bylaw. However, the Development Authority determined that the Arizona Room did not meet the regulations for an Accessory Use in Section 11.1.5 of the Land Use Bylaw.

[27] The Arizona Room will be attached as an addition to the incomplete Park Model and will therefore be considered part of the Park Model as per Section 11.1.5 of the Land Use Bylaw. Section 11.1.5 states that "accessory buildings attached to the Principal Building are considered to be part of the Principal Building and shall comply with the Setbacks applicable to the Principal Building for the applicable land use district."

[28] As per Section 20.3 of the Land Use Bylaw, Manufactured Home, Double Wide is considered a Single Detached Dwelling.

[29] Dwelling, Single Detached is a discretionary use on the Lands as outlined in Section 5.1.2 of the Land Use Bylaw. The fundamental use provision in Section 5.1.2(a)(i) limits the development of a Dwelling, Single Detached to pre-existing structures.

[30] The Development Authority stated that, on its initial review, the revised plans for the Park Model proposed by the Appellant would meet the definition of Recreational Vehicle, Park Model in the Land Use Bylaw.

[31] The Development Authority stated that the Arizona Room should not be considered an Accessory Use to the Park Model. An Accessory Use should be secondary in nature to the principal use.

[32] Accessory Uses are not usually connected in the manner in the proposed development with heating and ducting connecting the two. Accessory Uses typically are not heated or have their own source of heat. The Development Authority further noted that the size of the Arizona Room was approximately the same size as the Park Model.

[33] The Development Authority stated that the proposed development did not exceed the 65% site coverage limit in Section 5.1(4)(c) of the Land Use Bylaw.

[34] In refusing the Development Permit the Development Authority identified, based on the site plan, that the proposed development has a side setback of 1.0 m from the east property line adjacent to the internal roadway and does not conform with the required 1.5 m setback for external parcels as per Section 5.1.4(a)(v). The Development Authority considered the purpose of the setback from an internal road to be for safety and visibility along the roadway.

[35] The Development Authority stated that the Arizona Room exceeded the height restriction for Accessory Uses in the Bareland Recreational Resort District. Section 5.1(5)(c) of the Land Use Bylaw limits Accessory Buildings to one story and provides that Accessory Buildings cannot be more than 3.5 m in height from the inside wall grade to the peak of the roof.

[36] In response to questions from the Board, the Development Authority clarified how it measured the height of the Arizona Room from the inside wall grade to the peak of the roof and submitted that the height of the proposed Arizona Room was 3.54 m from the inside wall grade to the peak of the roof. The Development Authority stated that there were no limits on the length of an Accessory Building under the Land Use Bylaw.

[37] The Development Authority stated it does not consider other variances issued on neighbouring parcels when determining if a variance should be granted. The Development Authority could not confirm if variances to the side yard setback had been granted to other parcels in the Trestle Creek Golf Resort.

[38] The Development Authority submits that the Subdivision and Development Appeal Board uphold the decision of the Development Authority and refuse the appeal.

Appellant Dale Kurta

[39] The Appellant, Dale Kurta, submitted revised elevation plans for the Park Model which show the Park Model as a fully contained unit with a separate door and sliding door into the Park Model. The Appellant advised that with these changes, the Park Model meets the CSA Z-241 Standard.

[40] In respect of the requested variance from the 1.5 m setback from the internal roadway to a 1.0 m setback, the Appellant advised that the setback was required due to the shape of the parcel which only has a 38 foot frontage.

[41] The roadway adjacent to the parcel is an interior roadway for the Trestle Creek Golf Resort and not a County road. The Appellant stated that the common amenity area between the parcel and the internal roadway is approximately 8 feet wide and has spruce trees planted on it. The Appellant provided photographs showing the common amenity area between the parcel and the internal roadway. The Appellant stated that with the common amenity area, there would be a significant distance between the roadway and the proposed development. As such, there should be no impact on the visibility or safety of the roadway arising from the proposed variance.

[42] The Appellant noted that other parcels within the Trestle Creek Golf Resort have a 1 m side yard setback from a roadway.

[43] The Appellant stated that most Arizona Rooms are connected to Park Models in a similar way as the proposed development. He was confused as to the Development Authority's concern regarding the ducting connecting the Park Model and Arizona Room. The Appellant noted that the Arizona Room has an electric fireplace.

[44] The Appellant also expressed surprise when the Development Authority identified that the height of the Arizona Room exceeded the height limits in the Land Use Bylaw. He stated that this was the first he had heard that the proposed development had an issue with respect to the height of the Arizona Room.

[45] In response to questions from the Board, the Appellant advised that:

- a. The Park Model and Arizona Room will be attached once they are onsite.
- b. The furnace in the Park Model will provide heating to the Arizona Room through the ducting.

FINDINGS OF FACT

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

[47] The Lands are located at 501 – 53126 Range Road 70, legally described as Plan 1122441, Unit 328 and is within the Trestle Creek Golf Resort in Entwistle, AB, Parkland County.

[48] The Lands are located within the Bareland Recreational Resort District under the Land Use Bylaw.

[49] The use of the Park Model is a Recreational Vehicle, Park Model.

[50] The use of the Arizona Room is an Accessory Use to the Recreational Vehicle, Park Model.

[51] The Appellant Dale Kurta is an affected person.

[52] The requested variances 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

[53] 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 Land Use Bylaw and has considered the oral and written submissions made by and on behalf of those who provided evidence: the Development Authority and the Appellant.

- 687(3)** *In determining an appeal, the subdivision and development appeal board*
- (a) repealed 2020 c39 s10(52);*
 - (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

[54] 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.

[55] As the Appellant is the one who applied for a development permit, he is affected by this appeal.

Statutory Plans

[56] The only evidence before the Board on the applicable statutory plans is the information from the Development Authority. The Board heard no evidence that suggests that the proposed development is not in compliance with the statutory plans.

Nature of the Use

[57] The Board determined that the use is a Recreational Vehicle, Park Model with an Accessory Use for the reasons set out below.

[58] The Park Model, as shown in the revised elevation drawings provided by the Appellant meets the Land Use Bylaw definition of "Recreational Vehicle, Park Model" as it is built to the CSA Z-241 Standard on a single chassis. With revisions as shown on the revised elevation drawings, specifically the addition of a separate door and sliding door, the Park Model will stand as its own self-contained unit and will not require the addition of the Arizona Room to form a single unit.

[59] As such, the Board finds that the the Park Model meets the definition of Recreational Vehicle, Park Model. Recreational Vehicle, Park Model is a permitted use in the BRR – Bareland Recreational Resort District.

[60] The Board determined that the Arizona Room is an Accessory Use to the Recreational Vehicle, Park Model for the reasons set out below. An Accessory Use to a use allowed in Section 5.1.2(b) is a permitted use in the BRR – Bareland Recreational Resort District.

[61] The Land Use Bylaw Section 20.2 defines “Accessory” as “subordinate, incidental to, and exclusively devoted to a principal Use or principal Building.”

[62] As acknowledge by the Development Authority, the Arizona Room is exclusively devoted to the Park Model as per Section 11.1.1 and 20.2 of the Land Use Bylaw. The Arizona Room contains a living room, office and covered porch. The Arizona Room does not contain a kitchen, bathroom or sleeping facilities. The Arizona Room cannot be used for accommodation purposes as per Section 5.1.4(d). The use of the Arizona Room is dependent on the Park Model.

[63] The Board does not find that the connection of ductwork between the Park Model and the Arizona Room changes the use of the Arizona Room from an Accessory Use. The Appellant stated that the connection of the ducting between the Park Model and Arizona Room was common in the Park Models he had seen. The Land Use Bylaw contemplates that an Accessory Building may be attached to a Principal Building: see Section 11.1.5. The connection between the Arizona Room and Park Model does not change the fundamental nature of the Arizona Room as exclusively devoted to the Park Model.

[64] The Board finds as a fact that the Arizona Room is an Accessory Use to the Recreational Vehicle, Park Model. An Accessory Use to a permitted use under Section 5.1.2(b) is a permitted use in the BRR – Bareland Recreational Resort District.

Variance to the Land Use Bylaw

- [65] The proposed development contains two variances from the Land Use Bylaw:
- a. A decrease in the minimum side yard setback for external parcels from 1.5 m to 1.0 m; and
 - b. An increase in the height of the Accessory Building, the Arizona Room, from 3.5 m to 3.54 m.

Side Yard Setback

[66] The Board considered the Appellant’s request for a variance in the side yard setback from 1.5 m to 1.0 m. The Appellant provided information that the common amenity area between the parcel and the roadway was 8 feet wide. With the 1.0 m setback, there will be approximately 11 feet between the proposed development and the roadway. There are trees planted on the common amenity area between the parcel and the roadway. The roadway is not a County road but rather an internal roadway within the Trestle Creek Golf Resort.

[67] The Board finds that with the common amenity area, there is approximately 11 feet between the proposed development and the roadway. The Board finds that this is sufficient to ensure visibility for any traffic on the roadway. The Board also notes that there are trees between the parcel and the roadway and finds that the variance in the setback would not impact visibility or safety. The Board finds that the variance of 0.5 m 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.

Height of the Arizona Room

[68] The Board notes that the wording in the Land Use Bylaw requiring that an Accessory Building “shall not exceed 3.5 m in height from the inside wall grade to the peak of the roof” is an unclear measurement. The Board questions where a measurement for an “inside wall grade” is meant to be taken.

[69] In the absence of any other evidence, the Board relies on the Development Authority’s calculation of the height of the Arizona Room as 3.54 m. Section 5.1.5(c) of the Land Use Bylaw limits the height of an Accessory Building to 3.5 m.

[70] The Board has considered if the variance to allow an additional 4 cm of height is appropriate. The Board finds that the additional of 4 cm to the Arizona Room is minimal and 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.

Conclusion

[71] For the above reasons, the Board allows the appeal, and issues the Development Permit in accordance with the revised plans for the Park Model as submitted by the Appellant.

[72] Issued this 4th day of May, 2022 for the Parkland County Subdivision and Development Appeal Board.



Barb Williams, Clerk of the SDAB, on behalf of D. 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. Seghan MacDonald, Development Planner
2. Rachele Trovato, Development Planner (Observer)
3. Dale Kurta, Appellant

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

April 25, 2022 Agenda Package			
Exhibit	Description	Date	Pages
1.	Agenda Coversheet	April 21, 2022	1
2.	Table of Contents	April 21, 2022	2
3.	Notice of Appeal – Dale Kurta	March 23, 2022	8-10
4.	Submission of the Development Authority	April 20, 2022	11-64
5.	Submission of the Appellant – Dale Kurta	April 19, 2022	65-68
Documents Received at the Hearing			
6.	Additional submission of the Appellant – 2 photographs of the adjacent area	April 25, 2022	n/a