

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
PARKLAND COUNTY**

Legislative Services, Parkland County Centre  
53109A HWY 779  
Parkland County, AB T7Z 1R1  
Telephone: (780) 968-3234  
Fax: (780) 968-8413

HEARING DATES: October 7 and 10, 2019  
FILE NO.: 19-D-326

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

**INTRODUCTION**

[1] The Development Authority of Parkland County (the "County") refused a development permit application made by Dallas and Diane Cantrell (the "Appellant") for an Accessory Development (detached garage) located at 126-53509 Range Road 60, legally described as Plan 1621624, Block NA, Lot 35 (the "Lands").

[2] The Appellant appealed the refusal of the development permit application on September 16, 2019. The Appellant is represented by Roxroy Henry of RRH Construction Ltd.

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on October 7 and 10, 2019.

**PRELIMINARY MATTERS**

**A. Adjournment Request**

[4] At the hearing on October 7, 2019, Nancy Domijan, Manager, Development Planning and Safety Codes, requested an adjournment of the hearing. She informed the Board that Joshua Culling, a Planning Intern with the County and who had made the decision to refuse the development permit application, was involved in a motor vehicle accident and therefore unable to attend.

[5] The Appellant expressed sympathy for Mr. Culling, but submitted that they were under a tight timeframe for the proposed development. Mr. Roxroy stated that he needed the outside temperature to be 5 degrees Celsius overnight. He requested that this matter be resolved as soon as possible.

[6] The Board took a brief adjournment to deliberate and consider the adjournment request. When the hearing reconvened, the Board informed the parties that, given the circumstances, the Board was prepared to grant the adjournment. However, the Board also understood the Appellant's position and was prepared to reconvene the hearing on Thursday, October 10, 2019.

[7] The parties indicated they were available to reconvene on this day. The parties also consented to a different Board member hearing the appeal on October 10, 2019, as Mr. Philpott was unavailable. Given the short timeframe to reconvene the hearing and the fact that on October 7, 2019, the Board had only heard the adjournment request and no evidence, this was acceptable to the parties.

## **B. Board Members**

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

## **C. Exhibits**

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

## **D. Miscellaneous**

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

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

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

[12] At the end of the hearing, the Appellant requested that the Board issue a decision as soon as possible, given the time sensitive nature of the proposed development. The Board made an exception in this case and the Legislative Officer, on behalf of the Board, emailed the parties on October 11, 2019. The Legislative Officer informed the parties that the Board decided to uphold the appeal of refused Development Permit 19-D-326 and the variance was granted. The parties were also informed that a formal written decision would follow within 15 days. This is the formal written decision with the Board's reasons.

[13] The Board ALLOWS the appeal and the Development Authority's decision to refuse the development permit is REVOKED. The development permit application for the Accessory Development (detached garage) is granted.

## **SUMMARY OF HEARING**

[14] 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**

[15] The Development Authority submitted that the Lands are located within the Bareland Recreational Resort District ("BRR District"). The Development Authority determined the Use Class to be Accessory Development. Accessory Development with a variance is a discretionary

use on the Lands as outlined in Section 5.1 of the BRR District of the County's Land Use Bylaw 2017-18 (the "LUB"). Section 5.1.5 c) of the LUB provides that:

*Section 5.1.5 c) – Accessory buildings shall be limited to one story and shall not exceed 3.5 m in height from the inside wall grade to the peak of the roof.*

[16] The Development Authority submitted that the Lands comply with Municipal Development Plan section 8.0 (Recreation & Tourism) and section 10.0 (Natural Environment). The Development Authority submitted that the Lands are not subject to an Area Structure Plan or an environmentally significant area as defined in the Environment Conservation Master Plan.

[17] The Development Authority submitted that the Appellant was appealing the decision by the Development Authority to refuse a Development Permit for a detached garage 13' 6" (4.1 m) in height. The maximum height for an accessory building in the BRR District is 3.5 m. The BRR District is a recreational district, which allows for the use of RVs and Park models to be used as accommodation. The height regulation for this district ensures an appropriate scale of accessory development when compared to the accommodations in this district.

[18] The Development Authority explained that a variance may be issued if: 1) the variance is minor in nature, and 2) meeting the LUB creates a hardship for the Appellant. The Development Authority submitted that there is no definition of "hardship" in the LUB, and financial costs are not considered a hardship. In this case, the Development Authority submitted that the height requested is approximately 0.61 m higher than the regulation (a 15% variance). The Development Authority submitted that the variance was minor in nature<sup>1</sup> and therefore met the first part of the test.

[19] However, the Development Authority stated that the Appellant did not meet the second part of the test. The Development Authority submitted that the building design of the detached garage could be modified to meet the height regulations of the LUB. In addition, the Development Authority submitted that:

- a. The inability to remove trees is not as a result of a regulation in the LUB; it is a restriction of the Condo Board.
- b. The front setback for an accessory development in the BRR District is 3.5 m (11.48 ft.) and, based on the site plan provided, the accessory development is at least 8.5 m (28 ft.) from the property line.
- c. A safety rail could be used for the patio and the peak of the roof could be reduced to meet the regulation.

[20] The Development Authority asked that the Board uphold its decision to refuse the proposed development permit as it does not conform to the LUB.

---

<sup>1</sup> During the Development Authority's oral submissions, the Development Authority made a correction to a PowerPoint slide at page 47 of the Agenda package (Exhibit 1). The "not" in this sentence should be deleted and the sentence should read as follows: "The height requested is approximately 0.61 m higher than regulation, therefore ~~not~~ considered minor in nature."

[21] In response to questions from the Board, the Development Authority clarified that the patio would not be considered a second story. The two previous detached garage developments that were approved in this area met the LUB regulations, as the permits indicate that the maximum height was not exceeded.

## **Appellant**

[22] The Appellant's submissions included letters to the Board as well as oral submissions from both Mr. Henry and Ms. Cantrell. The submissions contained several reasons why the Board should exercise its discretion and grant the development permit. These reasons can be summarized as follows:

- a. Having the highest point of the building at 3.5 m poses a safety concern for the Appellant and their grandchildren, as the grandchildren would have easy access to the metal roof. This would also put that section of the roof under the 42" as set out for guard rails in the Building Code, which would result in the Appellant having to install a safety rail against the back wall. This would ruin the look of the building.
- b. There is financial hardship on the Appellant who has been paying for storage facilities for the last two to three years. There is a lack of storage space available on the Lands. Approving the proposed development would give the Appellant shelves for storage and save the Appellant money on storage space. The Appellant needs the storage space to store their belongings as well as their grandchildren's toys and other items.
- c. After taking into account the restriction on cutting down Birch trees, the neighbours' satellite and the distance between both properties, the width and length of the Accessory Development are maxed out from the neighbours' property. The Condo Board is in support of the proposed development, as it has aesthetic appeal.
- d. There are other developments at Sunset Shores that have rooftop patio areas or indoor mezzanines that surpass the height restrictions in the LUB.
- e. The Appellant's consulted with their neighbours and, after making some changes, have received positive feedback on the proposed development and its design.

[23] The Appellant provided photographs to the Board, a receipt from September 2019 showing a credit card charge for self-storage and letters from the neighbours on either side of the Lands (Lots 34 and Lot 36) indicating they have no concerns with the proposed development. The owners of Lot 36 wrote that they originally had concerns with the detached garage blocking their satellite signal and blocking both their front windows; however, they were able to reach an agreement with the Appellant so that the detached garage would be built further back on the Appellant's lot.

## **FINDINGS OF FACT**

[24] The Lands are located at 126-53509 Range Road 60, legally described as Plan 1621624, Block NA, Lot 35.

[25] The Lands are located in the Bareland Recreational Resort District.

[26] The use of Accessory Development is a discretionary use in the BRR District.

[27] The Condo Board and the neighbouring owners (Lot 34 and Lot 36) had no concerns with the proposed development.

## **REASONS**

### **Jurisdiction**

[28] 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, the MDP as well as considered the oral and written submissions made by the Development Authority and the Appellant.

### **Affected Persons**

[29] The Appellant, Dallas and Diane Cantrell, is the applicant for the permit and as such is affected by the appeal.

### **Statutory Plans**

[30] The Board heard submissions from the Development Authority that the Lands comply with sections 8.0 (Recreation & Tourism) and 10.0 (Natural Environment) of the Municipal Development Plan; that the Lands are not subject to an Area Structure Plan; and are not an environmentally significant area as defined in the Environment Conservation Master Plan.

[31] There was no evidence to contradict the submissions of the Development Authority on this point. The only evidence before the Board was that the proposed development complied with the statutory plans. Therefore, the Board finds the proposed development complies with the statutory plans as defined in the MGA.

### **Land Use District**

[32] The Lands are located in the BRR – Bareland Recreational Resort District.

### **Nature of Use**

[33] The Board finds that the proposed use is Accessory Development (detached garage), which is a discretionary use in the BRR District. The maximum height for an accessory building in the BRR District is 3.5 m. The Appellant sought a height variance variance of .61 meters for a total height of 4.1 meters.

[34] In determining whether to grant the height variance and grant the development, this Board must find that the development is reasonably compatible with the surrounding uses.

[35] Section 687(3)(d)(i) of the MGA sets out the Board's test when determining whether to grant a variance:

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

*[...]*

*(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.*

[36] The proposed detached garage is located in a recreational district, which provides for "condominium Recreational Vehicle resort development in association with amenity features ..." (Section 5.1 of the LUB - Purpose of the BRR District). The Board finds that the proposed development is compatible with the surrounding uses, which are residential and recreational. The Board finds that no neighbouring residences would be impacted by the detached garage at its proposed height or location, as both neighbouring owners (Lot 34 and Lot 36) have provided written submissions to the Board indicating that they have no concerns. The Board finds that the neighbours' concerns about light and the satellite have been addressed by the Appellant.

[37] The Board accepts that the Condo Board is in support of the proposed development and the aesthetic appeal it brings to the area. The Board notes that the Condo Board expressed no concerns to the Board about the proposed development and gave conditional approval of the proposed development one day after the Appellant submitted the Request for Development Approval to the Condo Board.

[38] The Board further notes that the proposed development complies with all other LUB requirements except for the height regulation, for which a variance has been requested. The Board notes that the Development Authority submitted that the variance was minor in nature.

[39] Based on the submissions of the Appellant and the photographic evidence presented, the Board is prepared to exercise its discretion and grant a variance in the circumstances. Finally, the Board notes that it is noteworthy that the adjacent neighbours and Condo Board expressed no concerns with the proposed development, nor did any other property owners provide submissions or appear in opposition to the development.

[40] For the reasons above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighborhood, not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The proposed development therefore meets the test established under section 687(3)(d) of the MGA, the variance is granted and the appeal is allowed.

[41] Issued this 25th day of October, 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

**PERSONS APPEARING**

1. Nancy Domijan, Manager of Planning and Development of Parkland County, appeared on October 7, 2019;
2. Joshua Culling, Planning Intern;
3. Roxroy Henry of RRH Construction Ltd., Appearing on behalf of the Appellant; and
4. Diane Cantrell, Appellant.

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

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda		N/A
2.	Notice of Appeal	September 16, 2019	5
3.	Submission of the Development Authority	October 1, 2019	7-48
4.	Submission of the Appellant – Roxroy Henry	September 30, 2019	50-66
5.	Submission of the Appellant received at hearing – Diane Cantrell	October 7, 2019	N/A