

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: September 28, 2020
FILE NO.: 20-D-215

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "Development Authority") approved a development permit (20-D-215) for Kel & Colleen Kreller (the "Applicant") for a Secondary Suite within Accessory Building (garden suite above detached garage with maximum floor area varied from 92 m² to 99 m²) and the setback for the building varied from 6 m to 5 m at the northeast corner only located at 12, 2022 Parkland Drive and legally described as Lot 12, Block 3, Plan 7920997 (the "Lands") on August 12, 2020 (the "Development Permit").

[2] On September 2, 2020, Kelly & Debbie Engstrom appealed the Development Permit.

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on September 28, 2020 via teleconference in accordance with 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] The Board marked the exhibits 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. The Board varies condition 1 in the Development Permit to read as set out below:

[9] Conditions

1. The development shall be setback a minimum of 6 m from the closest side edge of the property. The Applicant shall provide revised site plans which comply with the 6 m setback from the closest side edge of the property to the Development Authority for approval. The development shall conform to the plans approved by the Development Authority and shall not be moved, altered or enlarged except where authorized or directed through this permit approval.
2. The accessory building shall be attractive in appearance, with facades that apply compatible and harmonious exterior finishing, where applicable, buildings shall comply with any architectural/design guidelines in an area structure plan.
3. All development shall be landscaped in a manner to prevent any surface run-off onto adjacent properties.
4. The site shall be kept in a neat and orderly manner.
5. 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.
6. The secondary suite shall be designed, sited, constructed, finished and sided in a manner that is visually compatible, with the residential character of adjacent and neighbouring lands and the neighbourhood in general.
7. Failure to comply with the conditions of this permit may result in the permit being cancelled and or revoked.

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 within the CR – Country Residential District of Parkland County (“CR District”).

[12] The Development Authority received a development permit application for a secondary suite above a detached garage with the maximum floor area varied from 92 m² to 99 m² and the setback for the building varied from 6 m to 5 m at the northeast corner only.

[13] The Development Authority approved the development permit on August 12, 2020 (the "Proposed Development") subject to 11 conditions (see pages 11-12/70).

[14] The Development Authority determined the Proposed Development to be a Secondary Suite within Accessory Building. An Accessory Use is a permitted use in the CR District and a secondary suite is a discretionary use in the CR district as listed in Section 5.3 of the County's Land Use Bylaw 2017-18 (the "LUB").

[15] A Secondary Suite is defined in the LUB as follows:

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.

[16] The Development Authority determined that the Proposed Development was a Garage Suite. The Development Authority noted that Garage Suite and Garden Suite are undefined in the LUB, but that as the Proposed Development is within a garage, the Development Authority considered it to be a Garage Suite, type b of the three types of secondary suite.

[17] The Development Authority identified that the Municipal Development Plan, Bylaw 2017-14 (the "MDP") shows that the Lands are within the Rural Agricultural area and directly adjacent to the County Residential Area. The Lands are also located within the Prime Recreation/Tourism Area. The Development Authority indicated that the Proposed Development complies with section 8.2 of the MDP (Prime Recreation and Tourism Areas).

[18] The Development Authority identified that the Lands are not subject to an Area Structure Plan.

[19] The Development Authority determined that the Proposed Development was compatible with surrounding land uses on the basis that the Lands are located adjacent to other residential uses and that the secondary suite use is compatible with these other residential uses.

[20] The Development Authority stated that the 1 m variance at the northeast corner of the Proposed Development was due to the irregular shape of Lands. The variance for the setback only impacts a portion of the Proposed Development – the northeast corner.

[21] The Development Authority stated that the variance in the maximum floor size from 92 m² to 99 m² was in order to accommodate the enclosed stairway to access the secondary suite. This additional floor area is located at the back of the Proposed Development, facing away from the neighbourhood and towards the lake.

[22] In response to questions from the Board, the Development Authority stated:

- a. If the Proposed Development was solely a garage (an Accessory Use) the applicable setback would be 3 m and there would be no need for a variance. As the Proposed Development includes a secondary suite, section 12.16(4)(c) of the LUB requires that the Proposed Development meet the setback requirements for a dwelling (6 m from the side edge of the Lands);
- b. The West Parkland Gas Co-op Ltd gas line runs underneath the driveway, based on the resources available to the Development Authority. The Development Authority is not concerned that the Proposed Development would encroach on any required setback from the gas line, even if the Proposed Development was required to be sited 6 m from side edge of the Lands.
- c. There is no policy from the County that would prevent having two discretionary use permits side-by-side. The Appellants have a Sea-Can on their property which has a development permit which allows the Sea-Can to be placed 2 m from the property line, a variance of 1 m from the 3 m setback requirement. The LUB does not prohibit two developments each with a variance from setback requirements from being placed beside each other. The County does give extra consideration to these cases on the basis of fire concerns and that fire protection may have been required.
- d. The consequences of allowing the Proposed Development closer to the property line is minimal. The Development Authority stated that there were no potential concerns regarding the impact on the adjacent property.
- e. If the Applicant does not build in accordance with the plan approved as part of the development permit, it then may become an enforcement matter for the County. If the Applicant builds closer to the property line than permitted, the Applicant would need to apply for a new development permit for this variance and a new building permit.

The Appellants – Kelly & Debbie Engstrom

[23] The Appellants provided written submissions to the Board and Mr. Engstrom attended at the hearing to provide oral submissions to the Board.

[24] The Appellants live directly adjacent to the Lands to the north-east. They have lived on their property for 30 years. They have a development permit for a Sea-Can which is located 2 m from the property line by the Proposed Development.

[25] The Appellants expressed concerns that the Development Permit Application did not include accurate measurements.

[26] The Appellants identified a low spot on the Lands in which water gathers. They are concerned that if this low spot is filled in order to build the Proposed Development, the water will run off onto their property and flood the area in which they keep their Sea-Can. The water in this low spot is sometimes up to 3 feet deep. They are also concerned that the downspouts from the Proposed Development will drain onto their property.

[27] In response to the Applicants' submission that water has never drained onto the Appellants' property from the Lands, Mr. Engstrom stated that this is untrue, and that water does come onto his property. He stated that the owners of the Lands (who are not the Appellants) have admitted the same to him.

[28] The Appellants are very concerned about the West Parkland Gas Co-op Ltd gas line and the setbacks required for the Proposed Development from the gas line. They stated that an additional gas line will need to be installed to service the Proposed Development, resulting in 2 setbacks from gas lines and a setback from the property line all constraining where the Proposed Development can be placed.

[29] The Appellants stated that a Telus phone line runs parallel to the Lands and underneath the Proposed Development and they are concerned that if this Telus line is cut, it will impact their telephone service.

[30] The Appellants stated there will be increased traffic, noise and dust from a septic truck coming to service the holding tank for the Proposed Development. If a cistern is necessary for the Proposed Development, they have the same concerns with a water truck servicing a cistern.

[31] In response to submissions from the Applicants regarding the number of neighbours with cisterns, Mr. Engstrom stated that only two neighbours have cisterns and they are on the main road. Water trucks do not need to go down into the crescent to service those cisterns.

[32] The Appellant further stated that Proposed Development is a dwelling and the applicable setback should be 6 m.

[33] In response to questions from the Board, the Appellant, Mr. Engstrom stated:

- a. That if the Proposed Development was built according to the plans in the Development Permit, the only direct impacts on the Appellants and their use of their property would be the drainage onto their property and that there is limited space on the Lands to build and that they do not want it encroaching onto the setback.

- b. That the Appellants had a development permit for their Sea-Can and there is a variance to allow the Sea-Can to be placed 2 m from the property line. The Appellants use the Sea-Can for storage.
- c. That if the Applicants follow condition #3 in the Development Permit (that "All development shall be landscaped in such a manner to prevent any surface run-off onto adjacent properties"), the Appellants concerns regarding drainage are satisfied.

The Applicants – Kel & Colleen Kreller

[34] The Applicants, Kel & Colleen Kreller, provided written submissions to the Board and Mr. Kreller attended at the hearing to provide oral submissions to the Board.

[35] The Applicants provided the Board with a copy of a Real Property Report from 2016 which identifies the location and measurements of the Lands. The Applicants state that there is ample space to build the Proposed Development between the existing dwelling and the property line as there is 90 feet of distance between the two. The Proposed Development is only 28 feet wide.

[36] Mr. Kreller objected to the Appellants characterization that he provided inaccurate information to the County or to the Board. He provided the County with a rough drawing and had no intent to mislead anyone.

[37] The Applicants stated that there was no need to install a second gas line for the Proposed Development. They have had West Parkland Gas Co-op out to inspect the Lands twice. West Parkland Gas Co-op informed them that there will be no issue providing gas to the Proposed Development and that there will be little disruption to the existing dwelling and no disruption to the neighbouring residences. The Applicants provided a letter from West Parkland Gas Co-op which confirmed this information (page 66/70).

[38] In respect of the low spot identified by the Appellants, the Applicants submitted that this area was low lying, but the water only collected there during spring melt. The water does not exceed 1 -1.5 feet high. They submitted that the water has never drained onto neighbouring properties and that the Proposed Development will not affect the Appellants property. The Applicants intends to construct a swale or install weeping tile to carry any water to the south (towards the lake) to prevent it from collecting in the Proposed Development or running onto the Appellants' property.

[39] In respect of the Appellants concerns regarding septic trucks, Mr. Kreller stated only the two Applicants will be residing in the Proposed Development. A septic truck would only need to come to service the holding tank 3-4 times a year. This is a minimal impact.

[40] In respect of the water requirement, the Applicants stated that the existing well on the Lands had sufficient supply for the current dwelling and the Proposed Development. Mr. Kreller stated the water is good, soft water and they intend to use this water for the Proposed Development. If they did decide to put a cistern in, the impact of a water truck would be minimal.

[41] Mr. Kreller stated that his understanding was that the Telus line runs along the crescent. He stated Telus would not come out to the Lands because the Telus line did not go onto the Lands.

[42] In respect of the traffic, noise and dust, the Applicants submitted the Proposed Development would not increase the traffic, noise or dust in the area. Mr. Kreller stated that the Applicants are basically retired and would not cause any additional traffic, noise or dust.

[43] Mr. Kreller stated that the ide of the Lands where the Proposed Development is located is all filled with 40 to 50-foot-high trees screening the Proposed Development from the Appellants' property. The Proposed Development does not interfere with the Appellants view of the lake or any other amenity.

[44] In response to questions from the Board, the Applicants stated:

- a. The Lands have excellent drainage. The Lands slope downwards toward the lake.
- b. He was not sure how a surveyor could mark the property line due to the large trees along the property line. Mr. Kreller measured from the base of a large tree on the Lands and the real property report identified the distance between the existing dwelling and the property line as 90 feet.
- c. The Applicants could move the location of the Proposed Development to comply with the 6 m setback requirement.

FINDINGS OF FACT

[45] The Lands are located at 12, 2022 Parkland Drive and legally described as Lot 12, Block 3, Plan 7920997.

[46] The Lands are located within the CR – Country Residential District.

[47] The Proposed Development is an Accessory Building (Garage) and a Secondary Suite within the Accessory Building.

[48] The Accessory Building (Garage) is a permitted use in the CR District.

[49] The Secondary Suite is a discretionary use in the CR district.

[50] The Proposed Development is compatible with the neighbouring uses.

[51] The Appellants are affected persons.

[52] The Applicants are affected persons.

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 LUB and has considered the oral and written submissions made by and on behalf of the Development Authority, the Appellant 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 (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 were no objections made to those making submissions to the Board. However, the Board will address this issue in its reasons.

[55] The Appellants reside directly adjacent to the Lands. As such, the Board finds they are affected by the Proposed Development based on their proximity to the Proposed Development.

[56] As the person whose development permit is under appeal, the Applicants are affected by this appeal.

Statutory Plans

[57] The Board heard submissions from the Development Authority regarding the Proposed Development's compliance with the MDP. The Board heard no evidence contradicting these submissions and finds the Proposed Development complies with the MDP. The Lands are not subject to an Area Structure Plan.

Land Use District

[58] The Lands are zoned as CR – Country Residential (LUB Section 5.3).

What is the Use?

[59] The Proposed Development contains two uses.

[60] First, the Accessory Building (Garage) is an Accessory Use. The Accessory Building (Garage) is an Accessory Use to the existing Single Detached Dwelling on the Lands (Section 5.3.2(d) of the LUB).

[61] Second, the Secondary Suite within an Accessory Building is a Secondary Suite use (Section 5.3.2(e) of the LUB).

[62] As an Accessory Use is a permitted use in the CR District and a Secondary Suite is a discretionary use in the CR District, the Board will consider the merits of each use independently.

Accessory Use

[63] The Accessory Use of an Accessory Building (Garage) is a permitted use of the Lands. There is no appeal in respect of a development permit issued for a permitted use unless the provisions of the LUB were relaxed, varied or misinterpreted (MGA, s. 685(3)).

[64] In this case, the variances required were not due to the Accessory Use. The side edge setback for the Accessory Building (Garage) is 3 m (LUB, Section 5.3.4(b)(v)). The Proposed Development meets the setback requirements for an Accessory Building. As such, the Board will address the variances below when addressing the Secondary Suite Use.

Secondary Suite

[65] As the Secondary Suite is a discretionary use, the Board must assess the compatibility of the use applied for with the neighbouring uses as referenced in *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261.

[14] The object and purpose of a discretionary use is to allow the Development Authority to assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses.

[66] In its submissions, the Development Authority stated it considered the compatibility of the Proposed Development and found that it was compatible with the adjacent uses. As this was a

hearing *de novo*, meaning afresh, the Board will now turn its analysis to consider if the Proposed Development is compatible with the neighbouring uses.

[67] The Appellant raised the following concerns with the Proposed Development:

- a. Drainage;
- b. The gas line;
- c. The Telus line;
- d. Traffic, noise and dust from trucks to service the septic system or cistern;

Drainage

[68] The Appellants stated that they were concerned about drainage from the Lands onto their property if the low spot was filled. However, they did acknowledge that the condition in the Development Permit which required:

3. All development shall be landscaped in such a manner to prevent any surface run-off onto adjacent properties.

satisfied their concern regarding drainage.

[69] As such, the Board finds that the Proposed Development, with the imposition of condition 3 (above), addresses the concerns of incompatibility raised by the Appellants in respect of drainage.

Gas Line

[70] The Appellants' raised concerns regarding the location of the gas line on the Lands and potential constraints for the Proposed Development's placement and safety. The Applicant provided a letter from the West Parkland Gas Co-op identifying that the Proposed Development did not require a second gas line and that providing service to the Proposed Development would cause no disruption to neighbouring properties.

[71] The Development Authority provided evidence that the gas line ran underneath the driveway on the Lands and would not pose any issue with the placement of the Proposed Development with a 5 m setback or a 6 m setback from the side edge of the Lands.

[72] The Board considered the evidence provided by the parties and is satisfied that the gas line is located on the Lands such that it will not interfere with the placement of the Proposed Development. The Board finds that on the issue of the gas line, the Proposed Development is compatible with neighbouring uses.

Telus Line

[73] The Appellants identified a concern that the Telus line providing service to their property would be cut in the process of building the Proposed Development.

[74] The Applicants advised that they contacted Telus, and Telus would not come out to the Lands as the Telus line does not run onto the Lands. The Applicants understand that the Telus line runs along the cul-de-sac. The Board accepts the Applicants evidence regarding the location of the Telus line and finds that on this issue, the Proposed Development is compatible with neighbouring uses.

Traffic, Noise and Dust

[75] The Appellants argue that the trucks servicing the holding tank for the Proposed Development and any cistern (if the Applicants decide to use a cistern) would cause traffic, noise and dust in the neighbourhood.

[76] They stated that a septic truck would only need to come to the Lands three to four times a year to clean out the holding tank.

[77] Based on this information, the Board finds any increase in traffic, dust or noise as a result of the Proposed Development would be negligible. The use of the Proposed Development as a Secondary Suite is not an industrial development. Trucks will not need to travel to and from the Proposed Development on a daily or even weekly basis. A septic truck going to the Lands three to four times a year does not represent an impact on the Appellants' use of their property which would result in incompatibility.

[78] The Applicants identified that they did not intend to use a cistern and would instead rely on well water.

Conclusion

[79] The Board finds that the Secondary Suite use is compatible with neighbouring uses. The Lands are in a residential subdivision. The residential use of a Secondary Suite is compatible with the neighbouring uses in the residential subdivision.

[80] The property line separating the Appellants from the Proposed Development is heavily treed. The Appellants' resident is located on the opposite side of the parcel from the property line adjacent to the Proposed Development. The Board finds that the Proposed Development does not interfere with the Appellants' use of their property and that the Proposed Development is compatible with neighbouring uses.

Variances

[81] The Development Permit includes two variiances:

- a. A variance from 92 m² to 99 m² in floor area for the Secondary Suite; and
- b. A variance of 1 m from the setback requirement for a Secondary Suite.

[82] The Board's authority for variance is found in section 687(3)(d), as set out above. Provided there is no undue interference with the amenities of the neighbourhood, or no material interference with or effect on the use, enjoyment or value of neighbouring parcels of land, the Board may vary the regulations (but the Board cannot vary use).

[83] The Board notes that the Development Authority submitted that the variances were minor in nature as the setback is 1 m closer than allowable (15% reduction) and the floor area requested is 7 m² larger than allowable (8% increase).

The Floor Area Variance

[84] Based on the submissions of the Applicant and the Development Authority, the Board is prepared to exercise its discretion and grant the variance to the maximum floor area of a Secondary Suite in the circumstances.

[85] The Appellant did not raise any specific concerns regarding the 7 m² variance to the maximum floor area for the Secondary Suite or the size of the Proposed Development.

[86] The floor area variance is to allow an enclosed staircase and access for the Secondary Suite. This staircase is located at the rear of the Proposed Development and faces a lake.

[87] The Board finds that the floor area variance will not interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land based on the location of the Proposed Development and the enclosed staircase and the minor nature of the variance.

The Setback Variance

[88] In the CR District, a Single Detached Dwelling requires a setback of 6.0 m from the side edge of the parcel (LUB, 5.3.4(a)(v), page 24/70).

[89] A Secondary Suite must follow the setback requirements for a principal building (LUB, 12.16.4(c)). The setback requirement for the principal building on the Lands (a Single Detached Dwelling) is 6.0 m from the edge of the parcel.

[90] The Applicants stated at the hearing that they could move the Proposed Development to comply with the 6 m setback. No reasons were offered by the Applicants as to why a variance was required for the Proposed Development.

[91] The Board notes the Appellants have a development permit for a Sea-Can on their property. This Sea-Can is located 2 m from the property line adjacent to the Proposed Development. The development permit for the Sea-Can granted a 1 m variance to the required 3 m setback for the Sea-Can from the property line. The Appellants expressed concern regarding a variance that would allow the Proposed Development to be closer than the required 6 m setback from the property line due to their use of the Sea-Can.

[92] As the Board did not hear any evidence regarding why the variance was necessary and did hear evidence of concern about the variance from the Appellants, including for their use of their Sea-Can, the Board declines to grant the variance from the required 6 m setback from the side edge of the Lands for the Proposed Development.

[93] The Board finds that the Proposed Development should comply with the 6 m setback. As such, the Board allows the Proposed Development but varies condition 1 of the Development Permit to state:

The development shall be setback a minimum of 6 m from the closest side edge of the property. The Applicant shall provide revised site plans which comply with the 6 m setback from the closest side edge of the property to the Development Authority for approval. The development shall conform to the plans approved by the Development Authority and shall not be moved, altered or enlarged except where authorized or directed through this permit approval.

[94] Issued this 8th day of October 2020 for the Parkland County Subdivision and Development Appeal Board.



B. Williams, Clerk of the SDAB, on behalf of Jane 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. Thomas Lippiatt, Development Planner
 2. Karen Kormos, Manager, Development Planning & Safety Codes
 3. Kelly Engstrom, Appellant
 4. Kel Kreller, Applicant

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

Exhibit	Description	Date	Pages
1.	Agenda Coversheet	September 24, 2020	1
2.	Table of Contents	September 24, 2020	2
3.	Notice of Appeal – Kelly & Debbie Engstrom	September 2, 2020	3-5
4.	Submission of the Development Authority	September 22, 2020	6-42
5.	Submission of the Appellant – Kelly & Debbie Engstrom	September 22, 2020	43-56
6.	Submission of the Applicant – Kel and Colleen Kreller	September 22, 2020	57-70