

**ROCKY VIEW COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2021-SDAB-005
File No.: 04630047; PRDP20210477
Appeal by: G.A. (Tony) and Madeleine Yarranton
Hearing Date: 2021 May 27
Decision Date: 2021 June 10
Board Members: Wendy Metzger, Chair
Tricia Fehr
Hazel George
Morrie M. Goetjen
Pam Whitnack

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an affected party appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued April 15, 2021.

[2] In this decision, the Development Authority conditionally approved a development permit application for an oversize accessory building (detached garage) at 253 Artists View Way (Lot 24 Block 1 Plan 7510024; NW-30-24-02-05) (the Lands).

[3] Upon notice being given this appeal was heard electronically on May 27, 2021 in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020.

DECISION

[4] The appeal is allowed and the Development Authority's April 15, 2021 decision on PRDP20210477 is overturned.

BACKGROUND

[5] On February 8, 2021, Michael Kemp (the Applicant) submitted a development permit application for an oversize accessory building (detached garage) (the proposed development) on the Lands.

[6] The Lands are approximately 0.80 hectares (2.00 acres) in area and are owned by Courtney L. Makkinga.

[7] The Lands are designated as Residential, Country Residential District (R-CRD) under *Land Use Bylaw C-8000-2020* (the *Land Use Bylaw*).

[8] On April 15, 2021, the Development Authority issued a written conditional approval for the proposed development on the Lands.

[9] On May 3, 2021, G.A. (Tony) and Madeleine Yarranton (the Appellants) filed an affected party appeal of the Development Authority's decision to conditionally approve the proposed development on the Lands.

[10] The appeal was received on time in accordance with section 686(1)(b) of the *Municipal Government Act* RSA 2000, c M-26 (MGA).

[11] A notice of hearing was circulated to the Appellants, Applicant, Development Authority, and adjacent landowners in accordance with the MGA and Rocky View County Council Policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[12] The Board heard verbal submissions from:

- (1) Bronwyn Culham, Development Officer for the Development Authority;
- (2) Bianca Duncan, Municipal Engineer for the Development Authority;
- (3) Tony and Madeleine Yarranton, the Appellants;
- (4) Joan and Steve Chand'oiseau, on behalf of the Appellants;
- (5) Moire Dunn, in support of the appeal; and
- (6) Michael Kemp and Courtney Makkinga, the Applicants.

[13] The written documents submitted as exhibits and considered by the Board are listed in the exhibit list at the end of this decision.

Development Authority's submissions

[14] The Lands are located approximately located approximately 0.20 km north and 0.41 km east of Highway 563 within the Artists View subdivision.

[15] The Lands are approximately 0.80 hectares (2.00 acres) in size and are designated R-CRD under the *Land Use Bylaw*.

[16] The development permit application was assessed under the *Land Use Bylaw*. The Lands are located within the Central Springbank Area Structure Plan and the City of Calgary Intermunicipal Development Plan.

[17] The proposed development is for the construction of an oversize garage at the front of the property to be used for the storage of personal vehicles and for workshop purposes. Due to the requirements of the *Land Use Bylaw*, the proposed development required the following four relaxations:

- (1) Maximum accessory building area: the maximum requirement of the *Land Use Bylaw* is 90.00 square metres but the proposed development required a variance to 166.53 square metres, which is a variance of 85.03%;
- (2) Maximum parcel coverage: the maximum requirement of the *Land Use Bylaw* is 120.00 square metres but the proposed development required a variance to 166.53 square metres, which is a variance of 38.78%;
- (3) Maximum building height: the maximum requirement of the *Land Use Bylaw* is 7.00 metres but the proposed development required a variance to 7.64 metres, which is a variance of 9.14%; and
- (4) Minimum front yard setback: the minimum requirement of the *Land Use Bylaw* is 15.00 metres but the proposed development required a variance to 13.04 metres, which is a variance of 13.06%.

[18] The Development Authority completed a site inspection of the Lands on March 29, 2021. The Development Authority was unable to determine if construction was taking place, but no construction materials were observed and the site was tidy.

[19] Rocky View County received the Applicants' development permit application on February 8, 2021. The Municipal Planning Commission conditionally approved the development permit application on April 14, 2021.

[20] The Development Authority's approval included several prior-to-issuance conditions, including confirmation of road use agreements and the submission of a stormwater memo.

[21] Notice of the Development Authority's approval was circulated on April 20, 2021 to 42 adjacent landowners and one appeal was received.

[22] When the Development Authority prepared its submission, 25 signatures in support of the appeal were received from adjacent landowners.

[23] The restrictive covenants were provided as part of the development permit application but they are not a consideration of the Development Authority, as Rocky View County is not named in the agreement. It is the responsibility of landowners to review and comply with the requirement of restrictive covenants.

Tony Yarranton submissions – representing the Appellants

[24] The Appellants reside at 121 Artists View Way, which is one of the properties adjacent to the Lands. The Appellants represent 26 of the 32 homeowners on Artists View Way, all of whom have provided their signatures in support of the appeal.

[25] The Appellants read verbatim from their Exhibit #7 submitted to the Board.

Joan and Steve Chand'oiseau submissions – representing on behalf of the Appellants

[26] The Artists View subdivision is a rural residential community where homeowners purchase 2.00 acre parcels at great expense in order to enjoy privacy, space, nature, quiet, and distance from urban elements. The Chand'oiseaus' property is located directly east of the Lands.

[27] The Chand'oiseaus moved to the subdivision and invested in their property for the lifestyle and health benefits. Their investment is only justifiable in the long-term as the Chand'oiseaus are a single-income family and have children with special needs. This was to be their forever home.

[28] The Chand'oiseaus' property is nestled in a grove that can be seen from every window in their home. Visitors often remark that their home feels like a family cabin. Their primary view is to the west, which is where the proposed development would be situated.

[29] The proposed development would directly interfere with the adjacent properties and will affect the Chand'oiseaus' physical and financial wellbeing. The Chand'oiseaus want to be good, reasonable neighbours and understand why the Applicant would want an additional garage, even though they already have a four-car garage. The proposed development, however, is not reasonable.

[30] The Chand'oiseaus attempted to discuss their concerns with the Applicant, who verbally agreed to make minor changes to the proposed development. However, further conversations broke down when the Applicant refused to address the impacts in a significant way. The Applicant continues to assert that the impacts are negligible.

[31] Landownership carries with it rights, duties, and responsibilities. Landowners are expected to use their property reasonably, without injuring the rights of other landowners. One landowner's enjoyment of their property should not unreasonably interfere with the rights of other landowners. A landowner's enjoyment of their property becomes unreasonable when it constitutes an appropriation of adjoining properties or interferes with another landowner's ability to enjoy their property.

[32] The Chand'oiseaus oppose the proposed development because it is unreasonable and, if it is allowed to proceed, will unduly interfere with the amenities of the neighbourhood and would materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The proposed development would affect the Chand'oiseaus' property value and could make their property difficult to sell in the future.

[33] The proposed development would have a negative impact on the Chand'oiseaus and other adjacent landowners. The proposed development, compared to the existing structures on the Lands and around the community, is excessive. It is not in line with the spirit of the community or the restrictive covenants of the Artists View subdivision. This is evident by the overwhelming opposition to the proposed development by the community.

[34] The proposed development would be situated on the only portion of the Lands that would impact adjacent properties, which in this case is the Chand'oiseaus. The proposed development is oversized and would be located less than 15 metres from the Chand'oiseaus' deck which they spend as much time as possible enjoying throughout the year.

[35] The proposed development would be a substantial structure that would change the Chand'oiseaus' view of their property from both outdoors and indoors. The structure would diminish the amount of sunlight on their property and would cast long shadows across their deck and garden beds.

[36] The rural setting in which the Chand'oiseaus chose to live would be transformed by the proposed development and it does not comply with restrictive covenants intended to protect the community against these types of developments. There are no structures close to a similar size in the surrounding community. The closest structures of a similar size that the Chand'oiseaus could find were located at or near the Springbank Airport.

[37] According to the Workplace Hazardous Materials Information System (WHMIS) and the Canadian Centre for Occupational Health and Safety (CCOHS), automobile garages pose numerous risks to health and safety, including air quality, noise, and fire risks.

[38] The Chand'oiseaus often leave their doors and windows open for the fresh air and cool breeze. They rely on the wind to cool their home. The wind blows from the west to the east, which would be from the Lands towards the Chand'oiseaus' property. The proposed development, combined with the direction of the wind, would bring with it risks of exposure to chemicals and particles.

[39] One of the Chand'oiseaus' children has a complex health profile, including numerous environmental sensitivities that weaken the immune system. Exposure to hazardous chemicals and pollution could trigger negative and acute health responses.

[40] Another risk with the proposed development is fire. Insurance policies in the Artists View subdivision already reflect an increased risk of fires, as the community is heavily treed and there are no fire hydrants or direct water supplies. Fires ignite and spread rapidly.

[41] The Chand'oiseaus' property would have eight automotive bays, including the proposed development, whose use brings with it an increased risk of fire for the entire community. The Chand'oiseaus' property is a particularly hazardous location when their poplar trees release pollen and seeds. There was a pollen fire on their property on June 10, 2020.

[42] There are eight large coniferous spruce trees on the Chand'oiseaus' property along their property line with the Applicant. These trees provide a partial screen between their two properties. The proposed development would require digging deep into the ground for the structure's foundation and backfilling, which could damage and cause failure of the root system of the trees.

[43] The proposed development does not comply with the *Land Use Bylaw* and exceeds the maximum accessory building area by 85%, maximum parcel coverage by 39%, maximum building height by 9%, and minimum front yard setback requirements by 13%. The proposed development does not comply with the community's restrictive covenants.

[44] Over 80% of the community does not support the proposed development. The Development Authority's submission noted 25 of 42 adjacent landowners are in support of the appeal, but it is now 26 adjacent landowners. The Development Authority's submission should have indicated 32 adjacent landowners rather than 42.

Moire Dunn submissions – in support of the appeal

[45] Almost all of the 32 landowners on Artists View Way are opposed to the proposed development. Of the five missing, one property is for sale and the landowner of another is away.

[46] The proposed development would be the same height as Ms. Dunn's home with a larger square footage. Approximately one third of the homes in the community would be smaller than the proposed development.

[47] Most of the homes in the community are set well back from roads. Most of the homes have double garages, and a few have additional separate garages but they do not impact neighbouring properties and blend into the community.

[48] The Municipal Planning Commission was incorrectly told at its April 14, 2021 meeting that the proposed development would have no impacts on neighbouring properties and that there is a permeable gravel driveway on the Lands. However, the driveway is paved and stormwater may be an issue if more asphalt is added due to the proposed development.

[49] Ms. Dunn reiterated many of the concerns and impacts raised by the Chand'oiseaus over the proposed development and believes the development permit application should be denied.

Mike Kemp submissions – representing the Applicants in opposition of the appeal

[50] The Applicants feel like the proposed development is being misrepresented. If it was presented to the Applicants in the same way it has been presented to the community, they would be in opposition to it themselves.

[51] The proposed development is for parking the Applicants' vehicles and for yard maintenance equipment. The Applicants will not use the garage for industrial or commercial purposes. It is not an automotive business or a paint shop.

[52] The Applicants do already have a four-car garage, but they have four people residing on the Lands, all of whom are daily drivers. The Applicants need additional space for their collector cars and their grandfather's truck. These were significant investments and cannot be stored outside.

[53] The Applicants discussed the proposed development with the Chand'oiseaus and agreed to make changes to their development permit application, including reducing the height of the structure and moving its location to outside of the setback requirements of the *Land Use Bylaw* to eliminate the need for these two variances.

[54] Only one of the four garage bays of the proposed development would be at the height described by the Appellants. The one oversized garage bay would be for the storage of an RV so it is not exposed to the elements.

[55] Conversations with the Chand'oiseaus broke down when they began flying drones over the Lands without the knowledge or permission of the Applicants, which they likely would have been okay with had the situation been handled differently.

[56] Many of the photos submitted by the Chand'oiseaus are inaccurate, as their property is at a higher elevation than the Lands. The proposed development would be lower than characterized due to the elevation difference between the two properties.

[57] The Chand'oiseaus stated that the proposed development would diminish their view of their property, but the proposed development would only overlap for 9-10 feet. The trees along the property lines are approximately 35-40 feet tall and extend 25 feet from the proposed development to the Chand'oiseaus' property. Some of the trees would need to be moved due to the proposed development, but not the spruce trees.

[58] The Applicants understand the fire hazards and concerns about exposure to chemicals and pollution, but they are not proposing an industrial shop and the proposed development does not fall under WHMIS. The Applicants have operated a manufacturing business in Calgary before.

[59] The Applicants previously lived in a gated community in the Springbank Area, so they understand the serenity and beauty of rural living. They decided to move to the Artists View subdivision because it is a mature community with established trees and properties. The Applicants made an investment to move to the area and plan on improving the Lands.

[60] Nobody in the area has complained about the Applicants' use of their existing four-car garage and they do not know where the concerns over noxious vapours and chemicals for the proposed development came from. The Chand'oiseaus stated that they could not find structures in the community that are over 25 feet tall, but the Applicants' home is over 25 feet tall.

Tony Yarranton rebuttal – representing the Appellants

[61] The changes by the Applicant would still leave the proposed development non-compliant with the *Land Use Bylaw*, in particular the total footprint of the structure and the setback from the Chand'oiseaus' property.

[62] The Applicants did not consult with their neighbours when applying for their development permit, and only consulting the Artists View design committee after the permit had been approved.

[63] 26 of 32 neighbours believe the proposed development would adversely affect the country residential nature of the Artists View subdivision and the value of the properties in the area. Existing accessory buildings in the community are not similar to the proposed development.

[64] The proposed development would generate noise, air pollution, and sparks. The Chand'oiseaus presented well-documented evidence and their conclusions were not personal opinions. The Applicants dismissed the effects the proposed development would have on the health of the Chand'oiseaus' child and their property value.

[65] The Applicants' objections to the use of drones were heeded and the Appellants did not submit drone footage or pictures to the Board. The Applicants were initially supportive of drone footage but changed their minds, so the Appellants did not proceed with it.

[66] The Appellant holds a PhD in botany and agree with the Chand'oiseaus' statement that the spruce trees would not survive if the proposed development proceeds.

[67] The Applicant stated that the proposed development would be used for storing and repairing vehicles, which is the information the Appellants relied on for their evidence and submissions.

[68] RVs are not 25 feet tall.

Joan and Steve Chand'oiseau rebuttal – representing on behalf of the Appellants

[69] The Applicants' submissions called into question the Chand'oiseaus' representations; however, they feel like they presented factual, accurate information and did not misrepresent the proposed development.

[70] The existing screenage between the proposed development and the Chand'oiseaus' property, which are trees, would be destroyed by the proposed development. When that occurs, all they will be able to see is the proposed development.

FINDINGS & REASONS FOR DECISION

[71] The Board finds that accessory buildings greater than 90 square metres in size are a discretionary use within the R-CRD land use designation in accordance with section 323 of the *Land Use Bylaw*. The Board is satisfied that the proposed development meets the definition of an accessory building as defined in part 8 of the *Land Use Bylaw*. The Board, therefore, finds that it has the authority to make a decision on the matter pursuant to section 687 of the *Municipal Government Act*.

[72] The Board reviewed all evidence and arguments, written and verbal, submitted by the parties and focused on the most relevant evidence and arguments in outlining its reasons. The Board also considered the context of the proposed development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[73] The Board heard evidence from two parties opposed to the proposed development, the Appellants and the Chand'oiseaus, who reside immediately adjacent to the Lands and would be directly affected by the proposed development.

[74] The Board is satisfied that the evidence provided by the Appellants and the Chand'oiseaus shows that the size and location of the proposed development would negatively affect the use, enjoyment, and value of their properties. The Board recognizes that the Applicants were somewhat amenable to making changes to the size of the proposed development and its location on the Lands.

[75] The Board was also presented with evidence of overwhelming community opposition to the proposed development by most of the other residents within the Artists View community. The Board is satisfied that the evidence shows that the proposed development would negatively affect the amenities of the neighbourhood.

[76] The Board was presented with evidence regarding restrictive covenants registered on properties within the Artists View subdivision. The Board agrees with the Development Authority that compliance with the restrictive covenant is the responsibility of the landowners. The Board is not an enforcement mechanism for the subdivision's restrictive covenants.

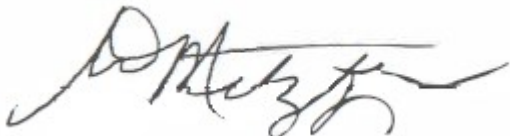
[77] The Board acknowledges, however, that non-compliance with the restrictive covenant is further evidence of the proposed development's incompatibility with the surrounding community.

[78] Given the above findings, and pursuant to section 687 of the *Municipal Government Act*, the Board finds that the proposed development would unduly interfere with the amenities of the neighbourhood and would materially interfere with and affect the use, enjoyment, and value of neighbouring parcels of land.

CONCLUSION

[79] For the reasons set out above, the appeal is allowed and the Development Authority's April 15, 2021 decision on PRDP20210477 is overturned.

Dated at Rocky View County, in the Province of Alberta on June 10, 2021.



Wendy Metzger, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

Documents presented at the hearing and considered by the Board.

NO.	ITEM
1.	Development Authority's Report to the Board (68 pages)
2.	Development Authority's PowerPoint (7 pages)
3.	Appellant Exhibits 3-7 (49 pages)
4.	Applicant Exhibit 1 (6 pages)
5.	Chand'oiseaus Exhibit 1 (21 pages)
6.	Two letters in support of the appeal (3 pages)