

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

Board Order No.: 2021-SDAB-009
File No.: 05629083 PRDP20211237
Appeal by: Wayne Bobye
Hearing Date: 2021 June 17
Decision Date: 2021 July 2
Board Members: Crystal Kissel, Chair
Tricia Fehr
Hazel George
Morrie M. Goetjen
Wendy Metzger

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 May 4, 2021. In this decision, the Development Authority conditionally approved a development permit application for the construction of a dwelling, single-detached with relaxation to the maximum building height at 24050 Aspen Drive (Lot 6, Block 10, Plan 1911658, NE-29-25-02-05) (the Lands). The Lands are located approximately 1.6 km (1 mile) south of Burma Rd. and 0.30 km (1/4 mile) west of Rocky Ridge Road.

[2] Upon notice being given this appeal was heard electronically on June 17, 2021 in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020.

DECISION

[3] The appeal is denied and the Development Authority's May 4, 2021 decision on PRDP20211237 is upheld.

BACKGROUND

[4] On March 26, 2021, Muhammad Basit (the Applicant) submitted a development permit application for a variance for the construction of a dwelling, single-detached with relaxation to the maximum building height.

[5] The Lands are approximately 5.11 hectares (12.63 acres) in area and owned by Muhammad and Nida Basit (the Owners).

[6] The Lands' land use designation is Residential, Rural District (R-RUR) under Land Use Bylaw C-8000-2020 (the *Land Use Bylaw*).

[7] On May 4, 2021, the Development Authority issued the written conditional approval for the construction of a dwelling, single-detached with relaxation to the maximum building height.

[8] On May 20, 2021, Wayne Bobye (the Appellant) filed an affected party appeal of the Development Authority's decision to conditionally approve the construction of a dwelling, single-detached with relaxation to the maximum building height.

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

[10] A notice of hearing was circulated to the Appellant, 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

[11] The Board heard verbal submissions from:

- (1) Wayne Van Dijk, Development Officer for the Development Authority;
- (2) Wayne Bobye, the Appellant;
- (3) Mark Kwasnicki, in support of the appeal; and
- (4) Muhammad Basit, the Applicant/Owner.

[12] 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

[13] The Development Authority read from their PowerPoint, provided as an exhibit.

[14] The variance is only for a pair of peaks on the roof of the house and the remainder of the house's height is compliant with the height restrictions under the *Land Use Bylaw*.

[15] If the house was 0.5 meters shorter, it wouldn't even need a development permit and no other relaxations are requested for this application.

[16] The Appellant's parcel is adjacent and borders the Lands to the south at the western edge of the Lands.

[17] There is a proposed subdivision referenced in the presentation but it is planned to the east of the Lands and would not include the Lands. The Development Authority does not know if a formal application for this subdivision has been received yet.

[18] The proposed house size is typical for this area.

Wayne Bobye's submissions – the Appellant

[19] This is a commercial-sized house and it is 14,000 square feet, including basement. Without the basement it is over 9,000 square feet.

[20] The height has been relaxed by 4.6% or just under 2 feet.

[21] The Appellant's house looks north across a large pond and will look directly at the house from the deck and patio.

[22] The size of the house and the relaxation makes the house more visible and takes away the Appellant's view.

[23] The Appellant has enclosed a picture in their submissions of the current view from his deck and patio to where the proposed house will go.

[24] The Appellant is also concerned that due to the size of the house, an internal sprinkler system is required by code for fire detection. The Appellant believes they are required to follow Part 3 commercial constructions for full sprinklers and architectural schedules.

[25] On Aspen Drive there are no fire hydrants so fire trucks will have to get to the Lands which is 300 feet from the road.

[26] The Appellant's house is 650 feet from the road and had to put a tank in the basement to improve water pressure.

[27] The Appellant is concerned that the Applicant's house is twice the distance back and in order to accommodate the sprinkler system, the Applicant will have to bury a big water tank in the ground.

[28] The reason the Appellant is so concerned about this is that on June 12, 2020 there was a lightning strike at 24160 Aspen Drive. Luckily the fire was contained because the property could be easily be accessed by firetrucks and EMS.

[29] In comparison, the proposed house on the Lands is far from Aspen Drive and has a lot of trees, including hundreds of dead ones.

[30] The fire at 24160 Aspen Drive lasted 6 hours and really concerned the Appellant.

[31] If the house was moved to the east then it wouldn't be as visible from the Appellant's house.

[32] The Appellant is not clear where the house would be placed in relation to the photo of trees taken from his patio provided in his submissions.

[33] There is no setback from the pond on the Lands. The house meets all setback requirements in terms of location.

[34] The fire code and fire safety concerns would all be handled at the building permit stage.

Mark Kwasnicki's submissions – in support of the appeal

[35] Mr. Kwasnicki has not had an opportunity or means to reach out to the Applicant and would have preferred that as a way to discuss his concerns.

[36] Mr. Kwasnicki lives directly to the east of the Lands and has been there for 22 years.

[37] The variance of the height of the house does not affect Mr. Kwasnicki.

[38] Mr. Kwasnicki does not have any concerns about the size of the house but it is 16,000 sq ft including pool area.

[39] Mr. Kwasnicki agrees with the Appellant that the house does have to comply with commercial construction and sprinkler systems and his concerns primarily relate to fire protection.

[40] There are a lot of dead fallen trees in the area and it is a concern.

[41] The fire trucks sometimes cannot get up the hills in the area. The proposed house would be 1400 feet back from the road and if the road is not constructed properly, the fire trucks would not be able to access to the property.

[42] Mr. Kwasnicki wants Rocky View County to protect properties before construction begins.

Muhammad Basit's submissions – the Applicant

[43] The relaxation for the house is just for the height of the roof.

[44] The house is for the Applicant, his wife, his four kids, and live-in nanny but only has five bedrooms so the size is required to meet their needs.

[45] A fire from lightning can happen anywhere and the Appellant has every intention of complying with required fire suppression codes.

[46] Similarly, when it comes to building the road, the Appellant will comply with all guidelines and safety codes.

[47] If the roof was under two feet shorter, the Appellant wouldn't have any say in the matter. The Applicant would have gone straight to getting a building permit and still would have complied with safety codes because safety is the Applicant's number one priority, especially as the Applicant and his wife are in the health care profession.

[48] They have a full team designing the house and road including a civil engineer, mechanical engineer, electrical engineer, architect, and structural engineer. They are following guidelines and completing due diligence before building house.

[49] The Applicant has provided photos in the exhibits, showing there are approximately 30-foot tall trees between the two houses on both sides of the pond as well as a long distance between the two properties. The Applicant doesn't see how the Appellant's view is being affected.

[50] Privacy is also a concern of the Applicant's but the distant between the two properties, the trees, and the pond all help to protect the Applicant's and the Appellant's privacy.

[51] If the house is of a size that under the building codes it needs a sprinkler system installed, it will be installed.

[52] There is no dark sky policy in the area so it should not be a concern.

[53] The Applicant took at 360 degrees of photos as part of their exhibits to demonstrate just how surrounded by trees the Lands are.

[54] The road is a bit distant from the house but the plan is to cut only those trees necessary to build the road. Currently, the plan is to only cut bushes to accommodate to the road. The Applicant has no interest in cutting trees unnecessary.

[55] The cut trees will be disposed of responsibly and will not be left on the Lands as a fire hazard.

[56] The Applicant appreciates the Appellant's feedback regarding the building codes and will look into it but those concerns are outside of the Board's scope.

[57] The road access would be coming from Aspen Drive and following the property line.

[58] Landscaping plan will include the planting of new trees but there is no determination at this time of the number of trees that will be planted.

[59] Currently on the Lands there are a lot of aspen trees.

[60] At this stage of the process, it is not possible to move the house. This location is appropriate due to height and the development permit. The house is not obstructing anyone's view. At most, someone could stare at the top of the roof.

[61] Moving the house could create more issues related to setbacks.

Wayne Bobye's rebuttal submissions – The Appellant

[62] The Appellant has reviewed the Applicant's pictures. Most of the trees between the Appellant's property and the Lands are aspens and have very few leaves except at the top of the photo where there are a few fir trees. The trees won't block the view very much and the deck and hot tub would be in line with the Appellant's view.

[63] The trees between the two properties are deciduous and when fall and winter comes, the leaves will disappear.

FINDINGS & REASONS FOR DECISION

[64] The Board finds that dwelling, single-detached is permitted in R-RUR, as outlined in section 316 of the *Land Use Bylaw*. The Board finds it has the authority to make a decision on the matter pursuant to section 687 of the *Municipal Government Act*.

[65] 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.

[66] The Board finds that the relaxations on the proposed dwelling, single detached are minor in nature and only necessary for the peaks on the roof. The Board also finds that the proposed dwelling is not out of character with the styles and size of homes in the area.

[67] The Board finds that due to the design of the dwelling it cannot be relocated on the property.

[68] The Board finds that the property has a great deal of trees that will provide the necessary screening for privacy for the neighbouring properties.

[69] The Board finds that all fire prevention will be dealt with at the building permit stage.

[70] Given the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that 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 also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

CONCLUSION

[71] For the reasons set out above, the appeal is denied and the Development Authority's May 4, 2021 decision on development permit application PRDP20211237 is upheld.

Dated at Rocky View County, in the Province of Alberta on July 2, 2021.



Crystal Kissel, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

Documents presented at the hearing and considered by the Board

- | NO. | ITEM |
|------------|--|
| 1. | Development Authority Report (41 pages) |
| 2. | Development Authority PowerPoint (5 pages) |
| 3. | Appellant Exhibit 1 (5 pages) |
| 4. | Applicant Exhibit 1 (9 pages) |
| 5. | Letter of Support (1 page) |