

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

Board Order No.: 2021-SDAB-013
File No.: 05607200; PRDP20212040
Appeal by: Colin and Marilyn Outtrim
Hearing Date: 2021 July 29
Decision Date: 2021 August 13
Board Members: Crystal Kissel, Chair
Wendy Metzger
Ian Galbraith
Hazel George
Morrie M. Goetjen

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued July 13, 2021. In this decision, the Development Authority approved a development permit application for the construction of a dwelling, single detached, relaxation of the maximum height requirement at 24 Bears paw Terrace Lot 4 Block 2 Plan 1811748, NW-07-25-02-05 (the Lands).

[2] Upon notice being given this appeal was heard electronically on July 29, 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 July 13, 2021 decision on PRDP20212040 is upheld.

BACKGROUND

[4] On May 10, 2021, Tricor Design Inc. (the Applicant) submitted a development permit application for the construction of a dwelling, single detached, relaxation of the maximum height requirement.

[5] The Lands are 0.80 hectares (2.00 acres) in size and owned by Robert P. Petryk (the Owner).

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

[7] July 13, 2021, the Development Authority conditionally approved a development permit application for the construction of a dwelling, single detached, relaxation of the maximum height requirement.

[8] On July 15, 2021, Colin and Marilyn Outtrim (the Appellants) submitted an appeal of the Development Authority's decision to conditionally approve the construction of a dwelling, single detached, relaxation of the maximum height requirement.

[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) Bronwyn Culham, Development Officer for the Development Authority;
- (2) Colin and Marilyn Outtrim the Appellant; and
- (3) Mike Borkristl, Tricor Design Inc. the Applicant.

[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 its presentation which was also provided as an exhibit.

[14] The Development Authority pointed out that there is an error with regards to the building area in the report that was given to the board but is correct in the presentation slides.

Colin and Marilyn Outtrim submissions – the Appellant

[15] The Appellant read from a letter that they sent via email on July 22, 2021, which was presented as an exhibit.

[16] The Appellant was unaware of the 15 meter setback.

[17] The Appellant stated that the proposed footprint of this structure is located at the most northerly and easterly portion of the parcel and if built will extend south and west and that the sight lines from their easterly and southerly windows will be impacted by the structure if placed in this location.

[18] The Appellant stated that there is considerable land southward from the proposed location that is available for repositioning the structure at a lower elevation and a greater distance from their property line.

[19] The Appellant had a conversation with the property owner on or about July 15th, where he was advised by the owner that each level of the proposed structure has a 12 foot ceiling height and that the overall structure is three stories above ground on the south exposure.

[20] Based on the Appellant's calculations the height is composed of 36 feet or 10.97 meters of living space, and allowing for floor trusses and a modest roof line an additional 10 feet or 3.05 meters, the total height to average ridge line is potentially 14 meters.

[21] The Appellant pointed out that the Rocky View County regulations state the height for a residential structure is 12 meters (per CD-129 Section 4.4.0 Maximum Requirements, Building Height) and that this application exceeds the newly revised maximum height requirement by approximately 2 meters.

[22] If the structure is permitted to be built at the proposed location and at the proposed height the Appellant says that their sight lines will be adversely impacted across approximately 45 degrees of their south east and south west view.

[23] The Appellant suggested that moving the structure southward would result in a lower overall elevation which would have the effect of lowering the structure approximately 1.5 meters.

[24] The Appellant would like to propose relocating the structure southerly with a relaxation of the 15 meter setback. By moving the structure 30 – 40 meters south this would reduce the house by another half meter in height.

[25] The Appellant would also like to propose reducing the ceiling heights to 10 feet from 12 for some or all of the three floors of living space could result in a lower structural height by 4 to 6 feet or 1.1 to 1.2 meters.

[26] The Appellant would like to propose that at the middle line where the garage complex joins the house if a step was put in the structure so that garage may stay more or less at the same elevation. Then the rear elevation of the house would still accommodate drainage away from the structure and it would reduce the height by a 1 to 1.5 meters and would bring the whole living space of the structure down.

[27] The Appellant would like to thank the owner, developer and Rocky View County for building such a beautiful house in the area.

Mike Borkristl – Tricor Design Group Submissions – representing the Applicant

[28] The Applicant stated that it is always difficult to change side and rear and front setbacks as these have been set in stone quite frequently from doing the subdivision from the original. If we were to relax the 15 meter setback to the south it would impact anyone who goes on lot 5.

[29] The Applicant stated that moving the house further to the south and lowering the garage would change the natural grade and drainage to the site. Natural drainage of the existing grade should not be disturbed, doing so would require a lot of dirt to be moved and an additional grading permit would be required.

[30] The Applicant stated that no one has the absolute right to views and sunlight under Alberta Law.

[31] The Applicant stated that the property owner has the right to develop his property in a reasonable fashion.

[32] The Applicant stated that sightlines include sweep angle of 83 feet, house is only blocking 15.73% of view.

[33] The Applicant stated that any home would block sightlines approximately by the same amount.

[34] The Applicant stated that the appellants home is one storey with a walk out basement and the proposed home is three stories only with walk out basement.

[35] The Applicant stated that any home of 12 meters in height under the relaxation they would be looking directly into that home, so any home that would be placed on that lot would still obstruct the view to the south somewhat.

[36] The Applicant stated that drawing number 5 shows a roof plan of the entire structure. The total roof area being 10,875 square feet and the relaxation portion of the roof is 1,464 square feet which is 13.64% of the total roof.

[37] The Applicant stated that the proposed structure is 291 feet away from the neighbour's house and would obstruct the view to the sky.

[38] The Applicant stated that the numbers have all been triangulated by a surveyor as well as by Tricor's drawings and that they are accurate.

[39] The Applicant stated that rooflines that would affect the view from the Appellants' home are 300 feet away.

[40] The Applicant feels that this is a reasonable relaxation to ask for, as it does not block sunlight and does not obstruct any view other than a view to the sky.

Colin and Marilyn Outtrim rebuttal submissions – the Appellant

[41] The Appellant stated that page 39 of the package shows the subdivision is a full 6 lot plan and was modified up until late 2018 when lot 1 and lot 6 were proposed for development. The green area was the original proposed placement on the 6 lots. The yellow areas were reduced from 45 meter to 25 meter set back from Bears paw Village Road.

[42] The Appellant stated that a portion of the 15 meter set back could be relaxed and the house could be moved along the slope and then the evaluation would fall in that direction.

[43] The Appellant stated that there is a 10 meter set back between lots 3 and 4 due to a drainage swale proposal if ever needed for properties to the east.

[44] The Appellant believes that the 15 meter set back is to protect forest on property that only runs 4- 5 meters into the property.

[45] The Appellant feels that there would be no affect to the storm water drainage ponds from the Applicants property.

FINDINGS & REASONS FOR DECISION

[46] The Board finds that the construction of a dwelling, single detached is a permitted use in the Residential, Country Residential District (R-CRD) in accordance with section 323 of *Land Use Bylaw*.

[47] The Board finds it has the authority to make a decision on the matter pursuant to section 687 of the *Municipal Government Act*.

[48] 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.

[49] The Board finds that the requested relaxation on the roof is minor in nature.

[50] The Board finds that views are not guaranteed under legislation.

[51] The Board finds that the architectural design of the proposed dwelling went through an architectural control process with the development authority and was deemed appropriate for the area, including the minor relaxation of height.

[52] 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

[53] For the reasons set out above, the appeal is denied and the Development Authority's July 13, 2021 decision on development permit application PRDP20212040 is upheld.

Dated at Rocky View County, in the Province of Alberta on August 13, 2021.

A handwritten signature in blue ink, consisting of several overlapping loops and horizontal strokes, positioned above a horizontal line.

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 (60 pages) |
| 2. | Development Authority Presentation (6 pages) |
| 3. | Appellant Exhibit (2 pages) |
| 4. | Applicant Exhibit (8 pages) |