ROCKY VIEW COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Board Order No.: 2022-SDAB-026

File No.: 04324011; PRDP20222772

Appeal by: Mattson, Tim

Hearing Date: 2022 December 15

Decision Date: 2022 December 30

Board Members: Kevin Hanson, Chair
Bob Doherty
Pip Farrar
Kerry Hubbauer
Moire Dunn

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an affected party appeal against the decision of the Development Authority to approve a development permit application for an Accessory Dwelling Unit (garden suite), relaxation of the maximum accessory building height requirement and relaxation to the maximum accessory building parcel coverage requirement at 243033 Range Road 280 (Lot 1, Block 2, Plan 0514327, SE-24-24-28-W04M,) (the Lands).

[2] Upon notice being given, this appeal was opened on September 22, 2022 in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta and conclude on December 15, 2022 via electronic hearing.

DECISION

[3] The appeal is upheld in part and the Development Authority's August 9, 2022 decision on PRDP20222772 is varied. A development permit shall be issued subject to the following conditions:

Description:

1. That an accessory dwelling unit (garden suite) may be constructed on the subject parcel, in general accordance with the submitted application and drawings.
    i. That the maximum accessory building height shall be relaxed from **7.00 m (23.00 ft.)** to **7.62 m (25.00 ft.).**

ii. That the maximum accessory building parcel coverage shall be relaxed from **285.00 sq. m. (3,067.71 sq. ft.)** to **442.50 sq. m. (4,763.00 sq. ft.).**

Prior to Release:

2. That prior to release of this permit, the Applicant/Owner shall contact County Road Operations with haul details for materials and equipment needed during construction/site development to confirm if Road Use Agreements or permits shall be required for any hauling along the County road system and to confirm the presence of County road ban restrictions.

    i. Written confirmation shall be received from County Road Operations confirming the status of this condition. Any required agreement or permits shall be obtained unless otherwise noted by County Road Operations.

Permanent:

3. That the accessory dwelling unit shall not be used for commercial or vacation rental purposes at any time unless approved by a separate Development Permit.
4. That there shall be adequate water and sanitary sewer servicing provided for the accessory dwelling unit.
5. That there shall be a minimum of one parking stall maintained on-site at all times dedicated to the accessory dwelling unit.
6. That there shall be no more than 2.00 m (6.56 ft.) of excavation or 1.66 m (5.45 ft.) of fill adjacent to or within 15.00 m (49.21 ft.) of the proposed dwelling unit under construction unless a separate Development Permit has been issued for additional fill.
7. That if the development authorized by this Development Permit is not commenced with reasonable diligence within 12 months from the date of issue, and completed within 24 months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.
8. That if this Development Permit is not issued by JULY 30, 2023, or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

Advisory:

- That a Building Permit(s) and applicable sub-trade permits shall be obtained through Building Services, prior to any construction taking place.
- That during construction of the accessory dwelling unit, all construction and building materials shall be maintained on-site, in a neat and orderly manner. Any debris or garbage shall be stored/placed in garbage bins and disposed of at an approved disposal facility.
- That the Applicant/Owner shall adhere to the County's *Noise Bylaw (C-8067-2020)* at all times.
- That the Applicant/Owner shall obtain and display a distinct municipal address for each dwelling unit located on the subject site (the dwelling detached and the Accessory Dwelling Unit), in accordance with the County *Municipal Addressing Bylaw* (Bylaw C-7562-2016), to facilitate accurate emergency response. *Note, the municipal address for accessory dwelling unit is A 243033 RGE RD 280.*

- That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner.
- That the Applicant/Owner shall obtain an Alberta Transportation Waiver and Roadside permit from Alberta Transportation.

BACKGROUND

[4] The Lands are designated as Residential, Rural District (R-RUR) under Rocky View County's *Land Use Bylaw* C-8000-2020 (the *Land Use Bylaw*) and are located approximately 1.61 kilometres (1.00 mile) north of Township Road 244 and on the west side of Range Road 280 and are 1.87 hectares (4.62 acres) in size.

[5] On May 26, 2022 Ke Xin (Casey) Fewell (the Applicant) submitted a development permit application for the construction of an accessory dwelling unit (garden suite), relaxation to the maximum accessory building height, and relaxation to the maximum accessory building parcel coverage requirement.

[6] On August 9, 2021, the Development Authority issued conditional approval for the development permit. On August 29, 2022, an appeal was submitted by an adjacent landowner in relation to impacts upon use, and enjoyment of their property.

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

[8] 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*.

[9] The Board opened a hearing on September 22, 2022 and granted an adjournment request made by the Appellant. The Board did not hear any merit arguments of the appeal on this date.

[10] The Board again opened a hearing on October 17, 2022 and granted an adjournment request made by the Appellant. The Board did not hear any merit arguments of the appeal on this date.

[11] The Board again opened a hearing on November 24, 2022 and granted an adjournment request made by the Appellant. The Board did not hear any merit arguments of the appeal on this date.

[12] The Board heard full merit arguments of the appeal on December 15, 2022 and this decision was made only by the Board Members in attendance on December 15, 2022.

SUMMARY OF EVIDENCE

[13] The Board heard verbal submissions from:

(a) Steven Lam, representing the Development Authority;

(b) Justin Rebello, representing the Development Authority;

(c) John Anderson and Donna Gee, representing the Appellant;

(d) Tim Mattson, the Appellant;

(e) Ke Xin (Casey) Fewell, the Applicant; and

(f) Andrew Fewell, on behalf of the Appellant.

[14] 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

[15] The proposed development is for the construction of an accessory dwelling unit (garden suite), relaxation to the maximum accessory building height, and relaxation to the maximum accessory building parcel coverage requirement.

[16] The proposed development would be located north of the City of Chestermere, approximately 1.61 kilometres (1.00 miles) north of Township Road 244 and on the west side of Range Road 280.

[17] The Lands are approximately 4.62 acres (1.87 hectares) in area and are designated Residential, Rural District (R-RUR) under Rocky View County's *Land Use Bylaw*. The Lands are primarily surrounded by residential acreages and agricultural parcels.

[18] Single detached dwellings are a permitted use and accessory dwelling units are a discretionary use within the R-RUR designation. The minimum parcel size in the R-RUR designation is 3.95 acres (1.60 hectares) in size, which does not allow for future subdivision of the Lands.

[19] There is no limitation on the number of accessory dwelling units on a specific property; instead, there are limitations on how much of a specific property can be covered in accessory dwelling until. The *Land Use Bylaw* also does not regulate the distance between structures on a property—it only regulates the distance of a structure from a property line through setback requirements.

[20] The Lands fall within the notification area between Rocky View County and the City of Chestermere. The City of Chestermere had no comments to provide on the proposed development.

[21] The Applicant is proposing to construct an accessory dwelling unit that is approximately 148.64 square metres (1,600.00 square feet) in area and 7.62 metres (25.00 feet) in height. The proposed development would require a relaxation of the maximum accessory building height

regulations and the maximum accessory building parcel coverage regulations in the *Land Use Bylaw*.

[22] The maximum accessory building height allowed under the *Land Use Bylaw* is 7.00 metres (22.97 feet). The proposed development would be 7.62 metres (25.00 feet) in height, which would be an 8.86% variance of the regulations in the *Land Use Bylaw.* This variance would accommodate the pitch-roof architectural style of the proposed development.

[23] The *Land Use Bylaw* has a maximum accessory building parcel coverage regulation of 285.00 square metres (3,067.71 square feet). The proposed development would result in an accessory building parcel coverage of 442.50 square metres (4,763.00 square feet), which would be a 55.26% variance of the regulations in the *Land Use Bylaw*. This variance would be required due to the existence of two other accessory buildings on the Lands.

[24] The Development Authority considered the proposed development on July 25, 2022 at its development team meeting and determined that the proposed development, including the proposed variances to the *Land Use Bylaw,* would not unduly impact the use and enjoyment of neighbouring parcels based on the proposed location of the accessory dwelling unit and existing screening and shelterbelts between neighbouring properties.

[25] The Lands are already well screened from neighbouring properties by existing trees and shrubs, and the proposed development would be located in the rear yard of the Lands and cannot be seen from Range Road 280. The proposed development would meet all setback requirements in the *Land Use Bylaw.*

[26] The Applicant submitted their development permit application to Rocky View County on May 26, 2022 and the Development Authority deemed their application complete on June 29, 2022. The Development Authority conditionally approved the development permit, including the required variances to the *Land Use Bylaw*, on August 9, 2022.

[27] The notice of decision was circulated to six adjacent landowners. No letters of support or opposition were received. The Appellants submitted their notice of appeal to Rocky View County on August 31, 2022 on the basis that the proposed development would affect the use and enjoyment of their property.

[28] The Development Authority noted a clerical error on the original notice of decision following the conditional approval of the Applicant's development permit application. The relaxation to the maximum accessory building parcel coverage did not include the area of the attached garage. The Development Authority referred the Board to the version provided in Attachment 'A' of its staff report.

[29] There are no open enforcement files on the Lands.

[30] The Development Authority included the term "garden suite" to provide further clarity to its external communications on the proposed development. The proposed development is for an accessory dwelling unit.

John Anderson submissions – representing the Appellant

[31] Section 640(1.1)(d) of the *Municipal Government Act* provides for the protection of agricultural land through municipal land use bylaws. Section 640(1.1) of the *Municipal Government Act* states that:

> *A land use bylaw may prohibit or regulate and control the use and development of land and buildings in a municipality, including, without limitation, by*
>
> *(a) imposing design standards,*
>
> *(b) determining population density,*
>
> *(c) regulating the development of buildings,*
>
> *(d) providing for the protection of agricultural land, and*
>
> *(e) providing for any other matter council considers necessary to regulate land use within the municipality.*

[32] Section 148 of the *Land Use Bylaw* establishes general requirements for the keeping of livestock in the County. Section 148 of the *Land Use Bylaw* states that:

> *Livestock General Requirements:*
>
> *a) Livestock is permitted in R-RUR, R-CRD and any parcel where Agricultural (General) is a listed use.*
>
> *b) Where livestock is kept, pastures shall be maintained to ensure that there is no overgrazing, and*
>
> *c) Where livestock is kept, manure shall be managed to ensure there is no runoff onto adjacent lands, riparian areas, or watercourses, in a manner that mitigates odour.*

[33] The Applicant's family has resided on the Lands since 2007. The Applicant provided several family photographs in their submissions, including pictures with grandparents and grandchildren.

[34] The Appellant's land is used for agricultural purposes—specifically for the keeping of horses. The Appellant conducted an extensive investigation for properties that were suitable for keeping horses when he was considering for properties to purchase in 2015/2016.

[35] The Appellant purchased his property after careful consideration. Of particular concern to the Appellant was the fact that the lands complied with the *Land Use Bylaw* of the time. When he purchased the property, it was for the operation of a riding arena using the existing quonset hut, riding stables, and a horse barn on the property.

[36] Since purchasing the property, the Appellant has been operating the riding arena which is a permitted use for his property in the *Land Use Bylaw*. The Appellant is also not the first landowner to operate a riding arena on the property. This was occurring for years prior to his purchase of the property.

[37] The Appellant often boards and quarantines horses that come from overseas. It is important that the horses have sufficient room, especially for the initial quarantine period. There are few properties in the area that can provide such facilities.

[38] The Development Authority used the phrase “garden suite” in its approval of the Applicant’s development permit application. That phrase does not appear anywhere in the *Land Use Bylaw*, and the use of the term should be considered an amendment to the *Land Use Bylaw*, which is outside of the Development Authority’s jurisdiction.

[39] If the Development Authority is to use the term “garden suite,” then it should be defined. As no such definition exists in the Land Use Bylaw, the Appellants suggested the following would be an appropriate definition of a “garden suite”:

> *“A garden suite is a one-story, small, temporary, and secondary residential structure with its own kitchen, bathroom, and living area with water and sewer services connected to those of the main dwelling that is designed to be portable and must be removed when it is no longer needed.”*

[40] The proposed development does not meet the definition of a “garden suite” provided by the Appellants. The proposed development would be two-stories in height rather than one, it would be over 1,600 square feet in area which is large, it would be on a foundation that is not temporary, it would have a second bathroom and an office that could be used as a second bedroom, and an attached garage.

[41] The proposed development would need its own access road, especially for emergency vehicles. The proposed development is not designed to be portable or to be removed when it is no longer needed. The long distance from the proposed development and the existing primary dwelling would be a safety hazard. It is designed to be a large, permanent two-story residential structure.

[42] The Applicant has provided no explanation for why an office, a large porch, a second story with a pitched roof, and a second bathroom are needed in the proposed development. There has also been no explanation provided for why an attached garage is necessary as opposed to parking stalls.

[43] If the proposed development is intended to only be a guest house for the Applicant’s mother, then the design of the accessory dwelling unit goes far beyond the characterization of a “garden suite” and is outside the requirements of the *Land Use Bylaw.* Due the nature of its design, the proposed development should instead be considered as a primary dwelling.

[44] Section 320(a) of the *Land Use Bylaw* provides for maximum density within properties designated R-RUR:

> *A maximum of two Dwelling Units – one Dwelling, Single Detached and one other Dwelling Unit where the other Dwelling Unit is not a Dwelling, Single Detached.*

The *Land Use Bylaw* does not allow two primary dwellings on a property, such as the Lands, with the R-RUR designation. The proposed development is therefore contrary to the *Land Use Bylaw*.

[45] Accessory dwelling units must be subordinate to primary dwellings under the *Land Use Bylaw*. The *Land Use Bylaw* provides the following definition for accessory dwelling units:

> *"Accessory Dwelling Unit" means a subordinate Dwelling Unit that may be located within a principal building or an accessory building. An Accessory Dwelling Unit that is external to the principal building shall be on a permanent foundation and has a minimum gross floor area (GFA) of 37.1 m^2 (399.34 ft^2).*

The proposed development is not secondary to the existing primary dwelling or any other building on the Lands. It is designed as a large house, and it is unclear what will be done with the proposed development once the Applicant's mother no longer resides there. It could be occupied by other families or subdivided and sold.

[46] The proposed development is not a "garden suite" or a guest house because these are used on a part-time basis and the Applicant's mother will be residing there on a full-time basis. The proposed development is not subordinate in any way to the existing primary dwelling on the Lands.

[47] Section 122(b) of the *Land Use Bylaw* establishes general requirements for accessory dwelling units. Section 122(b) of the *Land Use Bylaw* states that:

> *Accessory Dwelling Units shall:*
>
> *i. Be constructed on a permanent foundation,*
>
> *ii. Comply with the regulations in the applicable District,*
>
> *iii. Not exceed a gross floor area of 150 m^2 (1614.59 ft^2),*
>
> *iv. Include sleeping, sanitary, and cooking facilities,*
>
> *v. Provide a minimum of one dedicated on-site parking stall, and*
>
> *vi. Have a distinct County address to facilitate accurate emergency response.*

This section of the *Land Use Bylaw* uses the mandatory language of "shall not exceed a gross floor area of 150 m^2 (1614.59 ft^2)." There is nothing in the *Land Use Bylaw* that allows the Development Authority to interpret this mandatory language as discretionary. The proposed development is too large to be an accessory dwelling unit and should instead be considered as a single detached dwelling under the *Land Use Bylaw*.

[48] The *Land Use Bylaw* provides the following definition for single detached dwellings:

> *"Dwelling, Single Detached" means a dwelling which is supported on a permanent foundation or basement and has a minimum GFA of 37.1 m^2 (399.34 ft^2).*

The proposed development meets the definition of a single detached dwelling under the *Land Use Bylaw.* The Lands already have an existing single detached dwelling on them, which means that an additional single detached dwelling would not be permitted under section 320(a) of the *Land Use Bylaw.* Calling the proposed development an accessory dwelling unit undermines this section of the *Land Use Bylaw.*

[49] Even if the proposed development could be considered an accessory dwelling unit, it would unnecessarily impact the use, enjoyment, and value of the Appellant's property. Section 640(6) of the *Municipal Government Act* states that:

> *A land use bylaw may authorize a development authority to decide on an application for a development permit even though the proposed development does not comply with the land use bylaw or is a non-conforming building if, in the opinion of the development authority,*
>
> *(a) the proposed development would not*
>
> *(i) unduly interfere with the amenities of the neighbourhood, or*
>
> *(ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and*
>
> *(b) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

[50] Even if the proposed development could be considered an accessory dwelling unit, it would unnecessarily impact the use, enjoyment, and value of the Appellant's property. The Development Authority emphasised that the existing trees on the Lands would provide adequate screening and a noise break. However, the trees are deciduous and lose their leaves in the winter. The existing screening would not be continuous throughout the year. Even in the summer, there would be gaps in the screening.

[51] The Appellant provided photographs from his property and are more reliable than the photographs submitted by the Applicant and the Development Authority. The photographs show how the Appellant would actually be affected by the proposed development. Included in the Appellant's submissions is a photograph of a brush fire in 2019 that happened where the proposed development would be located.

[52] The Appellant provided comparative market analysis conducted by an experience realtor in the area. An appraisal was not conducted; however, the suggested listing price of the Appellant's property offered by the realtor in their comparative market analysis is $1,900,000.

[53] The Appellant's business is essentially a turnkey horse operation. If the proposed development is approved, it would have an impact on the nature of the Appellant's business. Horses are skittish by nature and can, without any indication, be triggered and put people in serious danger regardless of how well horses are trained.

[54] The location of the proposed development is close to the area on the Appellant's property where he keeps his and other people's horses. The proximity of the proposed development to the horses would be a safety hazard for children, as children are naturally curious and noisy.

[55] There would be a large distance between the proposed development and the existing primary dwelling on the Lands where children would be walking to visit their grandmother. There is nothing in the Applicant's development permit application that addresses the safety concerns with this, including freezing temperatures in the winter.

[56] There are coyotes in the area and they would also be a safety hazard for the Applicant's children. When coyotes are roaming in packs they target animals, including small children. There is no difference between a small animal and a small child to a coyote.

[57] If the proposed development goes ahead, the Appellant's mountain view would be negatively affected. The mountain view was one of the reasons why the Appellant purchased his property in the first place. The Appellant's ability to operate his business would be adversely impacted by the proposed development, and the value of the Appellant's property would be adversely impacted as well.

[58] The *Land Use Bylaw* is not designed to destroy business and the value of land, and the *Municipal Government Act* emphasizes this. The purpose of the *Land Use Bylaw* is to protect private property and the use of land. There is nothing in the *Land Use Bylaw* or the *Municipal Government Act* that gives the Development Authority the power to grant the variances that they did when they conditionally approved the Applicant's development permit application.

[59] Section 102 of the *Land Use Bylaw* requires the Applicant to provide a supporting rationale for any variances necessary for their development permit application. The Applicant has not provided this rationale. The Applicant has not explained why her mother cannot be accommodated within the existing primary dwelling on the Lands which she resided in before.

[60] The Applicant has also not provided a rationale for why a variance to the height of the proposed development is needed or why the Applicant's mother requires a pitched roof, second bathroom, office, and a garage.

[61] The Development Authority did not properly consider the impacts to the Appellant when they decided to approve the Applicant's development permit application. The Development Authority, for example, did not seem aware that the Applicant used fireworks on the Lands in June 2022 which would have spooked horses on the Appellant's property if there were any being boarded at the time. The Development Authority also did not seem to consider the 2019 grassfire that started on the Lands.

[62] Further, the existing screening on the Lands is insufficient and there is no indication that the Development Authority considered stormwater management in its decision to approve the proposed development. Water rises to the Appellant's property and he may lose the use of certain portions of his land due to stormwater drainage issues. A water table assessment should also be required if the proposed development is to go ahead.

[63] In effect, the proposed development would be a subdivision of the Lands. The Applicant has not explained what would happen when her mother passes away or moves out of the proposed development. Would it be torn down, renovated, rented out, or sold? In any case, it would likely require subdivision of the Lands and there would be impacts to the Appellant.

Tim Mattson's submissions – the Appellant

[64] The Appellant is an adjacent neighbour to the Applicant. He purchased his property in 2014 after doing extensive research, which included looking into the Applicant's Lands. The Appellant wondered why such a large house was needed on such a small property.

[65] When the Appellant was considering purchasing his property, he noted the Applicant had already reached the maximum parcel coverage allowed in the *Land Use Bylaw* and did not expect future development on the Lands. The Appellant and his wife enjoy his mountain view and the sunsets in the evening. The size and location of the proposed development would take those views away from them.

[66] The Appellant met the previous owners of the Lands. The previous owner, Mr. Dyck, was concerned with the Appellant being a new neighbour and further developing his lands after purchasing the property. Both the Appellant and Mr. Dyck had no intentions of further developing their respective properties at the time.

[67] When the Appellant was considering different properties to purchase, he avoided purchasing a different property because one of the neighbouring properties had an accessory dwelling unit on it that required a development permit approval on a regular basis. He decided to purchase his current property instead. The Appellant's property is specifically designed for its current use.

[68] The Appellant is concerned about the water table and his well. If the proposed development goes ahead, the impacts are all negative to the Appellant's property and limits where and what he can do on his land. The Appellant tries to keep peace with his neighbours, but he needs to be able to use his property as intended.

[69] The Appellant wonders why the Applicant's mother needs such a large home. She already visits the property and stays in the existing primary dwelling on the Lands. The Appellant feels like the proposed development is an excuse to build a second home on the Lands to facilitate future subdivision.

[70] The Appellant is puzzled as to why the Applicant cannot instead just use a mobile home for the accessory dwelling unit, which come in many different sizes and layouts.

[71] Over the course of his ownership of the property, the Appellant has received approval to bring horses from overseas which requires a quarantine period until the horses are cleared of any health issues. The proposed development would impact the Appellant's ability to use his property for agricultural purposes.

[72] The issues with the proposed development to the Appellant's horses are not limited to safety concerns but also include expenses. The Appellant's riding arena is used for training horses in jumping and English riding. When a horse becomes spooked, it can often injure itself as well, which comes with large veterinary expenses. Taking x-rays on horses, for example, is an expensive procedure to conduct.

[73] The Appellant's objection to the proposed development is with both the size and location of the accessory dwelling unit. If the proposed development were smaller in size and closer to the primary dwelling the Lands, especially if they were to be attached, it would not pose a danger to the horses on the Appellant's property and would not block their view.

[74] Horses become a part of a family in the same way that children become part of a family. They are beloved and enjoyed by many.

Ke Xin (Casey) and Andrew Fewell's submissions – the Applicant

[75] The Applicant's family has owned and lived on the Lands since 2007. The Applicant grew up in the existing primary dwelling on the Lands. The Applicant's father, Mr. Dyck, passed away unexpectantly in 2019 and she and her husband moved back into her childhood home in 2020.

[76] In the close to two decades the Applicant's family has lived on the Lands, they have not had issues with either of their neighbours. The Applicant has no intention of moving away or subdividing their Lands. However, there are existing bylaws in place that can be enforced if the Applicant were to move away in the future, such as Rocky View County's *Noise Control Bylaw.*

[77] The Applicant's widowed mother currently lives in British Columbia and the Applicant wishes to have her move back home on a permanent basis to take part in the lives of her grandchildren as they grow up. The proposed development would allow the Applicant's mother to live closer to her while also allowing her to have her own space. She is a quiet and reserved person.

[78] The Applicants have tried to follow Rocky View County's guidelines throughout the course of applying for a development permit for the proposed development. The proposed development would be located in the southwest corner of the Lands behind the existing primary dwelling.

[79] The Applicants were under the impression that the main concern with their development permit application was the total coverage of accessory dwelling units on the Lands. The specifics of the height and the floorplan were not a requirement at that point; however, the Applicant's mother drew up draft floorplans for the proposed development so they had an idea to work with.

[80] After they were informed that their development permit application had been approved by the Development Authority, the Applicants created the actual plans for the proposed development. The second story that the Appellants referred to in their submissions was included in the original draft floorplan but not in the later actual floorplan for the proposed development. The Applicant's final floorplan is for a single-story bungalow with a high pitched roof.

[81] The Applicant believes that the attached garage is a suitable feature to include in the proposed development, as it would allow vehicles to be stored indoors during the winter. There are three separate rows of large trees and bushes that provide screening between the Applicant and Appellant's properties. Even in the winter when the deciduous trees do not have leaves, there is still adequate screening.

[82] The Applicant contacted their neighbours, including the Appellant, when they made the initial decision to proceed with submitting a development permit application to ensure that their neighbours did not have any concerns.

[83] The Applicant's husband also contacted the Appellant after they had received their approval from the Development Authority. It was at this point that the Appellant voiced his concerns with the proposed development. The Applicant was under the impression that the Appellant's concerns were addressed and that he would not oppose the proposed development.

[84] It was a surprise, therefore, when the Appellant appealed the Development's Authority decision to approve the Applicant's development permit application. From the Applicant's understanding, the Appellant's concerns were the impacts on his way of life and the noise. The proposed development would be approximately 500.00 feet away from the Appellant's home.

[85] The landscape around both the Applicant and Appellant is rapidly and drastically changing. Compared to the scale of development occurring in the surrounding area, the proposed development is minor in the Applicant's opinion.

[86] Ground has been broken on a new mixed-use development named the Clearwater Park Development. This is a new community with both residential and commercial aspects in the Chestermere area and is less than 1.00 kilometre away. There is also the Keaton Estate Development that is advertising 2.00 acre lots for sale less than 700.00 metres away.

[87] The Appellant is the third owner of that property and the riding arena business has been operating as far as the Applicant can remember since moving there. All previous owners of the property have run horses on the property without issues from the Applicant's use of the Lands.

[88] The Applicant contacted Rocky View County in the summer regarding a fireworks permit for their Canada Day celebrations. The Applicant's husband contacted the Appellant to ensure that he did not have concerns with the use of fireworks. The Appellant did not raise any concerns at that point. The Applicant applied and received a fireworks permit from Rocky View County but did not end up using fireworks or their permit.

[89] The neighbours to the south of the Lands use their property for agricultural purposes and have farm equipment and vehicles stored on their property. The neighbouring property to south did not pose an issue to the Applicant when deciding where to locate the proposed development on the Lands.

[90] The term "garden suite" was not used by the Applicant in relation to the proposed development. This was a term used by the Development Authority.

[91] The Applicant wishes to address the concerns of her neighbours and expressed that she wants to maintain good relationships with them. The Applicant was open to removing or reducing the size of the existing additional dwelling units on the Lands to make room for the proposed development.

Donna Gee's rebuttal submissions – representing the Appellant

[92] The illustration of the proposed development on the Lands provided by the Applicant is not to scale. Much of the existing screening on the Lands would need to be removed in order to construct the proposed development.

[93] The proposed development would be located in the exact sightline from which the Appellant enjoys his view. The Lands are higher than the Appellant's property which poses stormwater management issues for the Appellant. There is already water that drains from the Lands onto the Appellant's property. The double car garage forming part of the proposed development is excessive for only the Applicant's mother.

[94] The Applicant suggested in their submissions that if they were to move or subdivide in the future, that there are bylaws in place that could be enforced to protect the Appellant. The Appellant suggested that the *Land Use Bylaw* should be enforced now to protect the Appellant. The proposed development is too large and too high to be an accessory dwelling unit.

[95] The Applicant suggested that they had been in contact with the Appellant and that he was in support of the proposed development did not express concerns. The Appellant, however, suggested that he has never supported the proposed development. The Appellant instead suggested that he would prefer a mobile home or a structure that is attached the existing primary dwelling.

[96] The Appellant is aware that a building permit would be required in the future if the proposed development is approved. However, by that time any opportunity to challenge the Development Authority's decision would be expired. If the proposed development is approved, the Appellant would weigh his options in the future.

FINDINGS & REASONS FOR DECISION

[97] The Board finds that accessory dwelling units are a discretionary use in the Residential, Rural District (R-RUR), as outlined in section 318 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*.

[98] 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.

[99] The Board heard evidence from the Appellant that the proposed development does not meet the definition of an accessory dwelling unit under the *Land Use Bylaw* due to the size of the structure and its permanent nature. The Appellant questioned why the proposed development requires an attached garage, second bathroom, dedicated office space, and a high-pitched roof.

[100] The Appellant offered that the proposed development should instead be considered as a primary single detached dwelling under the *Land Use Bylaw*. The *Land Use Bylaw* does not allow for two primary single detached dwellings on a property with the R-RUR designation. The Appellant suggested that the Development Authority, therefore, erred in its decision to conditionally approve the proposed development.

[101] The Board, however, agrees with the Development Authority that the proposed development does meet the definition of an accessory dwelling unit under the *Land Use Bylaw*. Although the proposed development is large in size and scope, the Board finds that the proposed development is subordinate in size and scope to the existing primary single detached dwelling on the Lands. Further, the Board finds that the definition of an accessory dwelling unit allows for permanent structures.

[102] The Appellant further argued that the Development Authority does not have the authority to issue variances to the requirements of the *Land Use Bylaw* given the mandatory language found in the bylaw. The Development Authority issued two variances when it conditionally approved the proposed development. The Board finds that the Development Authority does have the authority to issue variances under section 52 and 69 of the *Land Use Bylaw*.

[103] When the Development Authority considers a variance to the *Land Use Bylaw*, it must consider the impacts of a proposed development on neighbouring properties under section 101 of the *Land Use Bylaw*. The Board heard evidence from the Appellant that the proposed development would unduly impact the use and enjoyment of his property or materially affect the value of his property or his equestrian business.

[104] The Board heard evidence from the Appellant that the proposed development would pose a safety risk to those on the Applicant's and Appellant's property, especially children. The Board heard specific examples such as the presence of coyotes, cold temperatures, grassfires, and horses being spooked.

[105] The Board is not convinced by the Appellant's evidence that the proposed development would have undue impacts on the Appellant's use and enjoyment of his property or materially affect the value of his property or his equestrian business.

[106] The Board finds that these safety risks would be present regardless of whether the proposed development is approved. The Board agrees with the Applicant, for example, that the proposed development would reduce the risk of grassfires due to the landscaping and cleanup that would be required on the Lands. Further, coyotes are an inherent risk of living in a rural community and cold temperatures are an inherent risk of living in a winter climate. These are matters for the Applicant to address as a parent rather than by the Board.

[107] The Board appreciates the Appellant's commitment to providing a safe environment to those using the equestrian business on his property. The potential for horses to be spooked poses a real danger for users of the Appellant's equestrian business. However, the Board notes that the equestrian business has been in operation for decades, both before and after the Appellant's ownership of the property. These are not new dangers posed by the proposed development and the Board finds that there is sufficient existing screening between the two properties to mitigate sound and sight concerns.

[108] The Board heard evidence from the Appellant that the *Municipal Government Act* provides for the protection of agricultural lands and that the proposed development would have undue impacts on the agricultural lands in the area. The Board heard evidence from the Applicant that there are multiple mixed-use developments breaking ground in the area.

[109] The Board finds that the proposed development would not unduly impact the agricultural lands in the area as it is already undergoing more intensive mixed-use development than the proposed development. In the Board's opinion, the presence of an additional dwelling unit does not pose a threat to agricultural lands and would not change the character of the surrounding area in a material way.

[110] The Appellant raised concerns over the possibility of future subdivision of the Lands. The Appellant suggested that the proposed development should be considered as a quasi-subdivision. The Board notes that the Lands are not large enough in size for future subdivision, as the minimum parcel size in the *Land Use Bylaw* is 3.95 acres (1.6 hectares). The Lands are 4.62 acres (1.87 hectares) in size which limits the Applicant's future subdivision potential.

[111] Given the above findings and pursuant to section 687(3)(d) 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*.

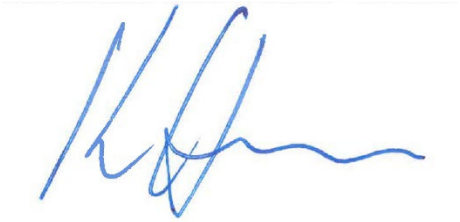
[112] The Board, however, is upholding the appeal in part to vary the Development Authority's decision on two matters. First, the Board is correcting the Development's Authority clerical error with the calculation of the maximum accessory building parcel coverage in its conditional approval of the development permit application.

[113] Second, the Board is granting the Applicant with additional time to satisfy the conditions of their conditional approval of their development permit application to accommodate the time lost by the extended period of this appeal.

CONCLUSION

[114] For the reasons set out above, the appeal is upheld in part and the Development Authority's August 9, 2022 decision on PRDP20222772 is varied.

Dated at Rocky View County, in the Province of Alberta on December 30, 2022.



Kevin Hanson, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

Documents presented at the hearing and considered by the Board

NO.	ITEM
1.	Development Authority Report (34 pages)
2.	Development Authority Presentation (7 pages)
3.	Appellant Exhibit 1 (78 pages)
4.	Appellant Exhibit 2 (2 pages)
5.	Applicant Exhibit 1 (24 pages)