SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY

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HEARING DATE: October 7, 2024
FILE NO.: PLDPR20240785

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] On August 28, 2024, the Development Authority of Parkland County (the "Development Authority") issued a development permit for an "Accessory building with a variance to combined maximum parcel coverage regulations for Accessory Developments (251 sq. ft.) and a variance to minimum side yard setback (2.9m)" (the "Development Permit"), located at 14 52506 Range Road 50, Parkland County, legally described as Plan 8320709, Block 1, Lot 14 (the "Lands"). The applicants for the Development Permit were Vince & Cindy Giguere (the "Applicants").

[2] On September 10, 2024, Calvin Vandemark (the "Appellant") filed an appeal of the development permit.

[3] The Subdivision and Development Appeal Board (the "Board") held the appeal hearing on October 7, 2024, in person.

PRELIMINARY MATTERS

A. Board Members

[4] The Chair confirmed from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. No one in attendance objected to the members of the Board hearing the appeal.

B. Exhibits

[5] The Chair confirmed that everyone in attendance had the full hearing package prepared for the hearing. There were no objections to any of the exhibits.

[6] At the beginning of the hearing, Brenda Black, agent for the Appellant, wished to submit a revised presentation in support of the Appellant's submissions. The Applicants were given time to review the materials and stated that they had no objection to the revised presentation being accepted by the Board.

[7] At the beginning of the hearing, the Applicants wished to submit additional materials in support of the Applicants' submissions. The Appellant was given time to review the materials. Ms. Black stated that the Appellant had no objection to the additional materials being accepted by the Board.

[8] The Board marked the exhibits received as set out at the end of this decision.

C. Miscellaneous

[9] The appeal was filed in time, in accordance with s. 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

[10] There was no request for an adjournment of the hearing.

[11] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[12] The Board denies the appeal.

SUMMARY OF HEARING

[13] The following is a brief summary of the oral and written evidence and arguments submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written materials and submissions filed in advance of the hearing.

Development Authority

[14] The municipal address of the Lands is 14 – 52506 Range Road 50, and the legal description of the Lands is Plan 8320709, Block 2, Lot 14. The Lands are located in the subdivision of Tamarac Retreats and are zoned LSR – Lakeshore Residential District. The Lands are not subject to an Area Structure Plan or an Area Redevelopment Plan. There are no environmentally significant areas ("ESAs") or features on the Lands; the adjacent parcel is a Municipal Reserve. Wabamun Lake is nearby.

[15] On August 16, 2024, the Development Authority received an application for a "Detached Garage". The fee for the development permit was paid on August 20, 2024.

[16] The Development Authority determined the use to be for Accessory Uses. Accessory Uses is a permitted use in the LSR – Lakeshore Residential District. The approval of the proposed development would bring the combined building coverage for accessory buildings on the parcel up to 203.3 m^2, which is approximately 23 m^2 over the maximum allowable under s. 11.1 of Parkland County's Land Use Bylaw 2017-18 (the "LUB"). The proposed side yard setback of 3.05 m was not compliant with the required 6 m in the LSR – Lakeshore Residential District when the side yard is adjacent to a municipal reserve; a variance of 2.95 m was required.

[17] On August 26, 2024, the Development Authority advised the Applicants that the proposed development does not comply with the LUB and that a written rationale and additional fees would be required to proceed with the application. Later that day, the Development Authority received a written variance rationale, and the Applicants paid the additional fees. In total, the application included:

a. an application fee;
b. a Certificate of Title;
c. a Landowner Authorization Form;
d. building elevations;
e. floor plans;
f. a site plan; and
g. a variance rationale.

[18] The Development Authority deemed the application for the Development Permit complete.

[19] On August 28, 2024, the Development Authority approved and issued the discretionary Development Permit. The Development Authority accepted the variance requests to the side yard setbacks and accessory building parcel coverage maximums as the proposed development would not significantly impact the current site conditions or neighbouring properties as:

a. variance on the side yard setback is less than 50%;
b. variance on the combined accessory building parcel coverage is ~10% over the maximum;
c. the maximum coverage of the parcel remains well under the maximum of 40% (pursuant to s. 5.8.4 of the LUB) at 9%; and
d. the proposed development would foster a more neat and orderly property by facilitating sufficient personal storage.

[20] On September 2, 2024, the Adjacent Landowner Notices were mailed out.

[21] On September 10, 2024, the Appellant applied to appeal the discretionary Development Permit.

[22] The Development Authority submitted that the SDAB should uphold the Development Authority's decision.

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

a. A garage is an Accessory Building. There is no requirement that it be the owner residing on a parcel of land who builds an Accessory Building.

b. The site plan initially submitted by the Applicants included sheds. The revised site plan submitted by the Applicants did not include any sheds. It is common practice to include all structures on a site plan, but the Development Authority was under the impression that the other sheds would no longer be necessary as they were temporary and would be removed. However, this understanding is not in writing. As it was assumed the

sheds would be removed, the square footage of the sheds was not determined or included in the combined maximum building coverage for Accessory Buildings. The removal of the sheds was not a condition of the Development Permit as the sheds do not appear in the County's database or on the submitted site plan.

c. The rear yard setback requirement of the proposed development was determined to be 1.5 meters pursuant to s. 5.8.4 of the LUB as the garage doors are not facing a subdivision road, given the information on the site plan. The image on page 46 of the Agenda Package shows a hypothetical structure that complies with the LUB. Although that hypothetical structure has a 6-meter setback, the rear yard setback could be 1.5 meters.

d. The Lands are not in an ESA.

e. There is no approved campground on the Lands.

f. The overhead photograph at page 45 of the Agenda Package was taken in 2023, and this image was taken into consideration when the Development Permit was granted.

g. If no variances had been granted, then there could not have been an appeal of the Development Permit.

Appellant – Calvin Vandemark by his agent Brenda Black

[24] Brenda Black, on behalf of Calvin Vandemark (the Appellant), made a presentation. No other individuals registered to speak in favour of the Appellant.

[25] Mr. Vandemark briefly stated that he resides at Lot 6, raised his family there and continues to spend time there.

[26] Ms. Black stated that she and her husband have owned Lot 1 for eight years and live there full time. Lot 1 is across the street from the Lands. She presented the concerns of Mr. Vandemark and other residents in Tamarac Retreats, many of whom were at the hearing.

<u>Wabamun Lake</u>

[27] Parkland County's Municipal Development Plan ("MDP") identifies the entire area surrounding Wabamun Lake as being an ESA and states that "land use should be managed from an ecological perspective". The County's Environmental Conservation Master Plan has the same designation. The Appellant believes the subdivisions of Wabamun Lake are aligned with s. 10.4 of the MDP where it addresses lake and watershed management, wetlands and development setbacks, which are to be incorporated into development and site plans.

[28] The ESA around Wabamun encompass more than the shoreline and the riparian area – it encompasses whole communities and subdivisions in some cases.

[29] There are wetlands in and around the Lands, which is critical to consider when deciding whether setback variances are appropriate. The only way to be sure is to have an

Environmental Impact Assessment completed. A comprehensive Biophysical Assessment would also be suitable as a requirement for parcels adjacent to wetlands, within 0.8 km of an ESA or if the site contains extensive tree cover. A thorough assessment of a development application within an ESA requires more than a desktop assessment.

[30] Everyone around Wabamun Lake lives in a watershed that is protected from overdevelopment, dumping and encroachment. Protecting the marshes and wetlands around Wabamun Lake is important.

Tamarac Retreats

[31] Tamarac Retreats is a small subdivision on the south shore of Wabamun Lake. In 1982-83, Tamarac Retreats was developed by the Gardener family, many of whom still live in the subdivision and adjacent lands or spend summers there. The Gardeners envisioned a small quiet community and included caveats on parcel titles to ensure that the parcels would remain single-family parcels with appropriate dwellings. The County also ensures that the parcels are legally developed through the MDP and the LUB. In doing so, adjacent municipal reserve lands are protected, adjacent landowners are not affected, and property values are maintained.

[32] The property west of the Lands, Lot 13, is a large municipal reserve. It consists largely of wetlands with water and muskeg and is not a good building site. Studies have shown that the muskeg in this area can be between 10 to 12 feet in depth before reaching solid ground. Lot 13 supports the wetlands integration with the Wabamun Lake watershed and contributes to the vitality of Wabamun Lake, the most studied lake in Alberta.

[33] The land south of the Lands is zoned Country Residential and is forested with wetlands and muskeg, extending into Tamarac Retreats' south boundary. These lands are owned by the Gardener family.

[34] Tamarac Retreats is free from traffic and big industrial buildings. There is one road in and one road out.

The Lands

[35] In contrast, the Lands are a mess of additional buildings, people and noise since it was permitted for re-subdivision. The Lands had not had development until the Applicants purchased it and started to develop it. First, a cabin and garage were moved in from another parcel in a neighbouring subdivision and were given permits for variances to the side yard setback. Ms. Black does not recall receiving notice from the County about these permits. The Applicants have assured the Appellant that the Lands is fully permitted as it is today, but only Parkland County can confirm.

[36] There are three dwellings on the Lands and numerous other buildings by the people living in those dwellings, none of whom are the Applicants. These buildings do not comply with any uses within the LUB. Only one full-time dwelling is allowed on a parcel in the Lakeshore Residential District. The Lands are already overdeveloped.

[37] Intensity of use has skyrocketed. There is more traffic, more noise and less privacy.

Ms. Black characterized the Lands as income property for the Applicant and notes that others have called it an enclave or a campground.

The Proposed Development

[38] The proposed development is an Accessory Building, which is defined as "subordinate, incidental to, and exclusively devoted to a principal Use or principal Building" according to the definition of "Accessory" in the LUB.

[39] According to the LUB, the only things that can be stored in the proposed development are the ones dedicated to the existing dwelling, so the items located in the yard. The Applicants do not own anything on the Lands except the primary dwelling and the existing garage, and the Applicants' personal items are not located on the Lands. The existing dwelling on the Lands is not the Applicants' primary residence nor do the Applicants live in Tamarac Retreats. The purpose of the proposed development is neither the Applicants' stated purpose nor the purpose allowable under the LUB.

[40] Ms. Black stated that it would be great if all of the trailers and buildings on the Lands could be stored in the proposed development, but she questions whether everything would fit. In order for the proposed development to comply with the maximum accessory building coverage requirements in the LUB, it has to be approximately the size of a garden shed.

[41] The proposed development will go directly beside the existing garage, tucked into the back southwest corner of the parcel. It will be quite visible due to the increase in grade that has been completed so far and the 45-degree positioning of the development, which will bring it further into the middle of the yard. Ms. Black was told that the Applicants will need to use exceptionally long pilings to get past the muskeg and into solid ground.

[42] Ms. Black believes that the proposed development would attract crime as the Applicants' property in nearby Water's Edge was broken into despite the existence of a similar storage building.

[43] Since the issuance of the Development Permit, 30+ tandems of fill have entered the Lands. The Applicants moved, graded and packed it all into place to form the base of the proposed development. The grade has risen significantly on the side of the Municipal Reserve wetlands. Dead trees and shrubs have been dumped on the Municipal Reserve. There have been claims that the Applicants have dug holes next to the secondary dwellings to bury new septic tanks.

The Variance to Maximum Building Coverage

[44] With respect to the variance to maximum building coverage, the parcel coverage already appears to be around 40% now, not 9% as stated by the Development Authority. The Accessory Buildings currently on the Lands would bring the total building coverage for Accessory Buildings in the Appellant's estimation to the maximum 1,937 square feet allowable in a Lakeshore Residential District. These buildings were not included in the Development Permit application.

[45] By Ms. Black's estimation, the other buildings on the Lands represent around 1,000 square feet of Accessory Building coverage, which would mean that a 1,251 square feet variance would be required. Ms. Black emphasized that a Real Property Report would be required to show the actual building coverage.

The Variance to Minimum Setbacks

[46] The Applicants were granted a variance of 2.9 meters to the side yard setback from the minimum requirement of 6.0 m.

[47] The Appellant believes that a 6-meter rear yard setback is also required as there are wetlands to the rear of the Lands. Ms. Black states that the Gardener family is looking into the original subdivision documents as they recall an environmental reserve easement adjacent to Tamarac Retreats.

[48] The proposed development has a much larger setback variance than the existing buildings on the Lands. In the Appellant's opinion, there is no setback variance required – there is a lot of room to set the building straight along the sides and back with no variances and still very easily back in items currently on the lot.

[49] Ms. Black reiterated that a Real Property Report would be required to show the property lines and the required setbacks.

Development Permit Conditions

[50] Ms. Black highlighted the conditions and permit notes of the Development Permit, many of which she believed to be in non-compliance.

Conclusion

[51] Ms. Black concluded that the Development Permit application contains material misrepresentations and errors and, as a result, is seriously flawed. The Development Permit conditions and notes are not being adhered to.

[52] The Appellant is not saying a garage cannot be built on the Lands, but it needs to be fully compliant with current legislation. The Appellant and Ms. Black insist that the next Development Permit application be vetted by them.

[53] The Appellant recommended that the Board:

a. refuse or cancel the Development Permit;
b. remedy the construction that has taken place without a permit;
c. impose a moratorium of one year on any further development to:
    i. allow secondary dwelling tenants to relocate;
    ii. allow the Applicants to complete and submit all reports and studies recommended by the Appellant; and
    iii. allow the Applicants time to learn how to complete an accurate Development Permit application; and

d. ensure that all landowners within Tamarac Retreats receive notice of future development permit applications from the Applicants, whether or not variances are requested.

[54] In response to the Applicants' submissions, the Appellant submitted that the letter submitted by the Applicants in respect of property values came from a colleague of the Applicants' daughter and represents a conflict of interest. The Board should not consider the letter as it is not a proper real estate assessment of the Lands. Further, Ms. Black raised a concern about drone photographs being taken of her property, without her knowledge, and her name and address being released in a public hearing.

Questions

[55] In response to Board questions, Ms. Black on behalf of the Appellant stated:

a. Mr. Vandemark is an affected person because he lives down the road from the Lands, within approximately 100 meters of the Lands.

b. The three dwellings to which Ms. Black referred are visible on the image at page 148 of the Agenda Package. They are:
    i. the original dwelling with the green roof and accessory garage;
    ii. a large RV with accessory buildings under the trees at the southern part of the Lands; and
    iii. a small trailer with a large, covered porch at the top right of the image.

    The RV is a dwelling because of the accessory buildings attached to it, such as the large, covered porch, and because people reside in it.

c. The proposed development is an Accessory Building as its approved use is for personal use. However, the Applicants do not live on the Lands and there are no personal belongings of theirs at that location.

d. It would be acceptable to the Appellant if the proposed development was set back on both the side yard and the rear yard, and it was the appropriate size. The proposed development cannot be put at 45 degrees as it puts the building more into view. The proposed development would not affect the amenities of the neighbourhood or the use, enjoyment or value of the Appellant's property if it is within the definition in the LUB. If the proposed development were within the required 6-meter setback, there would still be plenty of space to back in large RVs and it would not detract from the community.

e. While the variances do not affect the use, enjoyment or value of the Appellant's property, the variances are excessive. There is overdevelopment – with the existing dwelling, existing garage and proposed development, there would be roughly 3,800 square feet of development on the Lands. The maximum allowable for Accessory Buildings is 1,900 square feet for the existing garage and the proposed development. The only size that the proposed development could be approved for is a garden shed.

f. The MDP requires that developments within 0.8 kilometers of an ESA have a Biophysical Assessment completed.

g. The Appellant obtained his square footage measurements from one of the Applicants' drawings.

h. The Appellant called the County about the non-compliance on the Lands. The County advised them that they did not have an enforcement officer as they were in the process of hiring, and so there was no one to send to enforce.

Applicants – Vince and Cindy Giguere

[56] The Applicants, Vince and Cindy Giguere, own the Lands. However, they reside in the subdivision of Water's Edge, adjacent to Tamarac Retreats.

[57] In the Applicant's view, although the Appellant claims to speak for everyone in Tamarac Retreats, his views do not reflect everyone's views.

[58] With the proposed development, the Applicants are looking to build a safe place to keep their RVs and other vehicles, keep the Lands looking neat and tidy, and enhance their property value. The proposed development meets the intent for an Accessory Building. The proposed development will be tucked into a corner so that only a small portion of it will be seen, and it is fully compliant with guidelines.

[59] The Applicants submitted their Development Permit application with all required submittals. The Development Authority, tasked with interpreting bylaws based on established regulation, followed appropriate procedures and decided to approve the discretionary permit. The Applicants submitted that the only part of the appeal that is relevant is with respect to the variances. Otherwise, the Development Permit would have just been approved and built without variances.

[60] There are numerous outbuildings on the Gardeners' current parcels of land. The entrance to Tamarac Retreats contains oversized accessory buildings built on large shipping containers. Other residents use County land to store their items. Their properties are neglected, unappealing and un-permitted eyesores. In contrast, the proposed development will be aesthetically pleasing and located on the back corner of the property. The proposed development will be a smaller version of the structure on the Applicants' Water's Edge property.

[61] The Appellants have made false accusations as to the use of the proposed development. There is no bylaw against personal use of an accessory building if a tenant is living there. The Applicants will not be using the proposed development for any of the prohibited uses under s. 11.1 of the LUB.

[62] With respect to the rear yard, there is no setback variance required. The garage doors of the proposed development do not face a subdivision road.

[63] With respect to allowable site coverage, the Applicants have the third largest lot in the subdivision. Even with the proposed development, site coverage will be 9.58%, or over 3,000 square feet, well under the maximum allowable site coverage of 40%, or 14,748 square feet. There is a difference of 11,000 square feet between the site coverage to the maximum site

coverage.

[64] With respect to the existing buildings on the Lands, no permits are required for structures under 108 square feet, and these are not required to be included in the site coverage variance calculations. The Applicants have permits for everything on their property that requires permits. The two holiday trailers on the Lands are not residences according to the County's Community Standards Bylaw, which allows up to three RVs on a property. These trailers are used on the weekends and summer months and comply with Parkland County guidelines. The Lands are not used as a campground.

[65] There are no wetlands within the Lands, and no Biophysical Assessment is required.

[66] There has been no stop work order issued against the proposed development. The Applicants have not started the building process. There has been no construction whatsoever.

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

a. The primary dwelling on the Lands is the structure with the large green roof as shown by the image on page 45 of the Agenda Package.

b. There are two developer caveats on title – one to do with metal fencing and one to do with mobile homes.

c. The Applicants require the side yard setback variance because they would like to tuck the proposed development away from view, which looks neater and tidier. In addition, the variance would allow for better access. Without the setback variance, the Applicants would have to remove trees on the Lands.

d. The Applicants require the building coverage variance to be able to fit motor homes inside the proposed development. The Applicants require three lanes of traffic inside the proposed development.

e. The sheds on the Lands will be removed after the proposed development is built.

FINDINGS OF FACT

[68] In addition to the specific facts set out under the Board's reasons, the Board finds the following as facts.

[69] The Lands are legally described as Plan 8320709, Block 2, Lot 14, and municipally described as 14 – 52506 Range Road 50, Parkland County.

[70] The Lands are located within the LSR – Lakeshore Residential District of the LUB.

[71] The use of the proposed development is as an Accessory Use to a Dwelling, Single Detached.

[72] An Accessory Use to a Dwelling, Single Detached is a permitted use in the LSR –

Lakeshore Residential District.

[73] The Development Permit was issued on August 28, 2024, for an "Accessory building with a variance to combined maximum parcel coverage regulations for Accessory Developments (251 sq. ft.), and a variance to minimum side yard set back (2.9m)".

[74] The appeal was filed on September 10, 2024.

[75] The Applicants are affected persons.

[76] The Appellant and Ms. Black are affected persons.

REASONS

Jurisdiction

[77] The Board notes that its jurisdiction is found in s. 687(3) of the *MGA*.

> ***687(3)*** *In determining an appeal, the subdivision and development appeal board*
> *...*
> *(a.1) must comply with any applicable land use policies;*
> *(a.2) subject to section 638, must comply with any applicable statutory plans;*
> *(a.3) subject to clause (a.4) and (d), must comply with any land use bylaw in effect;*
> *(a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;*
> *(b) must have regard to but is not bound by the subdivision and development regulations;*
> *(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*
> *(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,*
> *(i) the proposed development would not*
> *(A) unduly interfere with the amenities of the neighbourhood, or*
> *(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,*
> *and*
> *(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

[78] In making this decision, the Board has examined the provisions of the MDP and the LUB and has considered the oral and written submissions made by and on behalf of those who provided evidence: the Development Authority, the Appellant and the Applicants.

[79] In his submissions, the Appellant asked for measures such as remedying the construction that has taken place without a permit, imposing a moratorium of one year on any further development, and ensuring that all landowners within Tamarac Retreats receive notice of future development permit applications from the Applicants. The Board does not have the jurisdiction to order these remedies.

Affected Persons

[80] The first question the Board must determine is whether those individuals who made written submissions and appeared before the Board are affected persons. The Board notes that no party raised any objection with any other party's participation.

[81] As the person who applied for the development permit, the Applicants are affected by this appeal.

[82] The Appellant and Ms. Black live in close proximity to the Lands. Due to the proximity of the proposed development, the Board finds that the Appellant and Ms. Black are affected by the proposed development.

Issues to be Decided

[83] The Board must determine the following issues:

1. What is the nature of the use of the proposed development?

2. Is the use authorized within the Lakeshore Residential District?

3. Should the Board exercise its variance power under s. 687(3)(d) to confirm the issue of the Development Permit?

4. Does the proposed development comply with the applicable statutory plans?

What is the nature of the use of the proposed development?

[84] The Development Authority, the Appellant, and the Applicants all agreed that the proposed development is an Accessory Building to an existing Dwelling. However, the Appellant also raised a concern that the Applicants would use the proposed development to store the trailers and other items currently on the Lands. These items do not belong to the Applicants, and the Applicants do not live on the Lands. The definition of "Accessory" under the LUB requires use to be "exclusively devoted to a principal Use or principal Building", yet the Applicants would not be using the proposed development in a way that is exclusively devoted to the existing Dwelling.

[85] The evidence of the Applicants is that they intend to use the proposed development for personal storage of their RVs and other vehicles.

[86] Despite the Appellant's agreement that the proposed development is an Accessory Building, the Appellant's concern suggests that the Appellant is questioning whether the

proposed development falls within the definition of Accessory Building. As a result, the Board must make a determination as to the nature of the use, to determine whether the proposed development falls within the definition of Accessory Building.

[87] Section 20.2 of the LUB defines "Accessory" as "subordinate, incidental to, and exclusively devoted to a principal Use or principal Building". The principal use of a Dwelling is residential, and personal storage is in keeping with a residential use. In the Board's view, personal storage is a use that is subordinate, incidental to and exclusively devoted to the principal use of a Dwelling. By contrast, the storage that is proposed is not for commercial or industrial purposes, which would not be subordinate to the residential use of a Dwelling.

[88] The Board accepts the Applicants' direct evidence that they will be storing their RVs and other vehicles in the proposed development. The Applicants are not resident on the Lands. Even so, the Board is not convinced that personal storage of non-residents' items changes the use classification of the proposed development. The nature of the storage does not change from being accessory to the residential use, regardless of whether the Board considers the storage as being the Applicants items in the proposed development or viewing it as a proposed development in which the residents will store the Applicants' items on their behalf. In the Board's view, the nature of the storage remains residential, since the items stored are typical of what would be stored in a residential district (RVs, etc.). The Board is not convinced that storage in the circumstances outlined should be considered to be a commercial or industrial use.

[89] Based on the above reasons, the Board finds as a fact that the use of the proposed development is as an Accessory Use to a Dwelling, Single Detached.

Is the use authorized within the Lakeshore Residential District?

[90] The Development Authority stated that an Accessory Use to a Permitted Use is a Permitted Use in the LSR – Lakeshore Residential District. This evidence was not contradicted by the Appellant or the Applicants. Therefore, the Board finds as a fact that an Accessory Use to a Dwelling, Single Detached is a Permitted Use in the LSR – Lakeshore Residential District.

Should the Board exercise its variance power under s. 687(3)(d) to confirm the issue of the Development Permit?

[91] Having concluded that the Use is permitted, the Board now turns to s. 685(3). Section 685(3) of the MGA provides that "no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted".

[92] The Development Permit (pages 8-9 of the Agenda Package) in evidence before the Board states that the proposed development is an "Accessory building with a variance to combined maximum parcel coverage regulations for Accessory Developments (251 sq. ft.) and a variance to minimum side yard setback (2.9m)". The Board therefore finds as a fact that the Development Authority granted variances to the maximum parcel coverage regulations for Accessory Developments and minimum side yard setback.

[93] In light of the Board's finding that the Development Authority varied the provisions of the LUB in respect of the maximum parcel coverage regulations for Accessory Developments and minimum side yard setback, the Board must determine whether it will exercise its variance power under s. 687(3)(d) of the *Municipal Government Act*, which provides:

> *(3) In determining an appeal, the board hearing the appeal referred to in subsection (1) …*
> *(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion*
> *(i) the proposed development would not*
> *(A) unduly interfere with the amenities of the neighbourhood, or*
> *(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and*
> *(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

Maximum Building Coverage for Accessory Buildings

[94] The Appellant stated that the parcel coverage for Accessory Buildings on the Lands is approximately 1,000 square feet more than what was represented by the Applicants in their Development Permit application as the Applicants failed to include the many other unpermitted buildings, including RVs and trailers which are currently on the Lands.

[95] Section 16.2(j) of the LUB allows accessory buildings smaller than 10 m^2 (107.6 square feet) to be constructed without a permit, and it was the Applicants' evidence that none of the buildings on the Lands in question are greater than 108 square feet. As these buildings do not have permits, there is no information as to how much square footage these buildings take up in total. Further, the Board accepts that the Applicants will be removing the sheds after the proposed development is completed as the Applicants have said, and that some of the items on the Lands will be placed inside the proposed development. As a result, the Board does not need to consider the size of those smaller buildings when considering the variance for maximum building coverage.

[96] In the discussion below, the Board considers whether a variance to maximum building coverage for accessory buildings is appropriate.

[97] The Appellant submitted that there is "overdevelopment" on the Lands, which has increased traffic and noise and reduced privacy to the neighbouring lands, which interferes with or affects the enjoyment and value of the neighbouring parcels of land. The Appellant argues that further development would worsen this problem.

[98] The Board has considered this argument. In evaluating it, the Board notes that the complaint is in regard to "overdevelopment", by which the Board understands the Appellant to be saying that there are too many buildings on the Lands. As stated above, the buildings which are smaller than 10 m^2 (107.6 square feet) should not be counted in the building coverage calculation. Further, the Board has considered that with the construction of the Accessory Building, the Applicants will be able to store their vehicles and personal items, which will keep the Lands looking neat and tidy, which would enhance, rather than detract from, the aesthetic

of the neighbourhood.

[99] The Board notes that the Appellant provided no evidence of property values other than a statement that the proposed development would affect the value of neighbouring parcels. The Board is not persuaded of such an effect without specific evidence of this point. Additionally, the proposed development is a personal storage building. It seems unlikely to the Board that a personal storage building would increase traffic or noise or reduce privacy in the neighbourhood, and there was no specific evidence from the Appellant that there would be increased traffic or noise.

[100] Based on the Board's review of the evidence, the Board finds as a fact that the variance to maximum building coverage for accessory buildings will not materially affect or interfere with the use, enjoyment or value of the neighbouring parcels of land.

Side Yard Setback

[101] The Appellant argues that a variance to the side yard setback is not required as there is a lot of room to place the building within the required setbacks. As the Lands are adjacent to a Municipal Reserve, the Appellant is concerned with protection of the Municipal Reserve from nearby development. The Appellant raised a concern that dead trees and shrubs have been dumped on the Municipal Reserve, and the grade of the Lands on the side of the Municipal Reserve has risen significantly. The Appellant argued that the reserve lands were similar to an Environmental Reserve due to the features of those lands.

[102] Although the Appellant did not use the specific language of s. 687(3)(d), the Board understands this portion of the Appellant's argument to be that the proposed development will unduly interfere with the amenities of the neighbourhood, and the Board understands that the amenity in question is the municipal reserve. The Board accepts that a municipal reserve parcel can be a neighbourhood amenity. Municipal Reserve parcels provide space which can be used for recreation or parks.

[103] The issue before the Board is whether the side yard variance will materially interfere with the Municipal Reserve. It was not clear how the variance would cause an interference with the Municipal Reserve. The Appellant provided no evidence of how the proximity of the Accessory Building would affect the Municipal Reserve lands. As a result, the Board finds that a variance of 2.95 m to the side yard setback will have limited, if any, interference with the Municipal Reserve. The full amount of the setback is needed only at one point of the proposed development, as it will sit at a 45-degree angle to the edge of the Lands.

[104] Further, although the Appellant suggested that the Municipal Reserve had significant environmental features, the Board notes that a Municipal Reserve, pursuant to Part 17, Division 8 of the MGA, is land set aside for a municipality upon subdivision. It is not the same as an Environmental Reserve and does not necessarily contain sensitive environmental features, as was suggested by the Appellant. Rather, if a subdivision authority wishes to preserve natural features of land, such as wetlands, it can require an Environmental Reserve pursuant to s. 664 of the MGA. The Board is not convinced that nearby development would affect a Municipal Reserve to the extent it may have affected an Environmental Reserve. The Board is also not convinced that the construction of the proposed development will unduly interfere with the

Municipal Reserve.

[105] Based on the Board's review of the evidence, the Board finds as a fact that the variance to the side yard setback will not unduly interfere with the amenities of the neighbourhood.

[106] The Board acknowledges that the Appellant wishes the Board to order that the proposed development cannot be placed at a 45-degree angle to the edge of the Lands so that less of the proposed development will be visible from the road and from other parcels. However, the Board cannot do so. The Board has no power to direct the Applicants to change the orientation of the proposed development. There is no requirement in the LUB that the Applicant must build the proposed development perpendicular to the edge of the Lands. The Board notes that the variance to the side yard setback will allow the proposed development to be further tucked into the Lands so that less of the proposed development will be visible from the road and from other parcels.

Rear Yard Setback

[107] The Appellant argues that, in addition to a variance to the side yard setback, a rear yard setback variance is required.

[108] Section 5.8.4(c) of the LUB states:

> *Minimum rear yard Setback shall be*
> *i) 6.0 m for the principal dwelling and Accessory buildings adjacent to a municipal reserve, environmental reserve or lake shore;*
> *ii) 6.0 m for an Accessory building adjacent to an internal subdivision road where the vehicle doors face an internal subdivision road, or 1.5 m for Accessory buildings and garages where the vehicle doors do not face the road; and*
> *iii) as determined by Alberta Transportation when the side yard is adjacent to a Highway.*
>
> *[Emphasis added.]*

[109] The proposed development has a rear yard setback of 3.05 m. The Appellant argues that the required rear yard setback is 6 m rather than 1.5 m, as stated by the Development Authority, such that a variance is required. According to the Appellant, the rear yard of the Lands is adjacent to the Gardeners' property, which they believe may contain an Environmental Reserve easement. Other than a general assertion, no evidence was provided as to the existence of such an easement.

[110] Despite the Appellant's oral submissions, the Appellant's written materials, at page 133 of the Agenda Package, contain a map that appears to label Municipal Reserves and Environmental Reserves in the surrounding area. The map does not label the property adjacent to the rear yard of the Lands as an Environmental Reserve.

[111] In the absence of evidence, the Board is not prepared to accept that the property adjacent to the rear yard of the Lands is an Environmental Reserve. Rather, based on the map

provided by the Appellant, the Board finds it more likely than not that the property to the south of the Lands is not an Environmental Reserve.

[112] The Development Authority stated that the proposed development's vehicle doors do not face a subdivision road. This evidence was uncontradicted, and the Board accepts it. Based on this evidence, the Board finds that the appropriate rear yard setback for the proposed development is 1.5 m pursuant to s. 5.8.4(c)(ii) of the LUB. As the proposed development has a rear yard setback of 3.05 m, it complies with the LUB, and no variance is required.

Biophysical Assessment

[113] The Appellant argues that a biophysical assessment must be completed in respect of the Lands as the Lands are within 0.8 km of an ESA pursuant to s. 5.8.5(a) of the LUB.

[114] Section 5.8.5(a) of the LUB states:

> *Pursuant to the MDP, a biophysical assessment shall be required for a site proposed for a multi-Parcel subdivision or a major development if all or part of the site is located within areas defined as environmentally significant in the Environmental Conservation Plan, and may be required within 0.8 km of areas defined as environmentally significant in the Environmental Conservation Plan, or if the site contains natural features such as sloughs or extensive tree cover.*
>
> *[Emphasis added.]*

[115] According to s. 5.8.5(a), a biophysical assessment is only required in the event of a multi-parcel subdivision or a major development if all or part of the site is located within an ESA. The LUB defines "Major Development" as "a new commercial, industrial, resource extraction, institutional, recreational, or multi-unit residential project that may create off-site impacts in terms of traffic generation, environmental, municipal infrastructure, or similar effects." The proposed development is not any of these things. The proposed development is neither a multi-parcel subdivision nor a major development.

[116] A biophysical assessment may be required if the site is located within 0.8 km of an ESA or if the site contains natural features. No direct evidence was given as to the distance between the Lands and the Wabamun Lake ESA. Based on the evidence given by the Appellants that Wabamun Lake is nearby and the Wabamun Lake ESA encompasses more than the shoreline and the riparian of the lake, it is possible that the Lands are within 0.8 km of an ESA, but the Board is not prepared to draw a specific conclusion on this point in the absence of evidence.

[117] Even had the Board concluded that the Lands are within 0.8 km of an ESA, the requirement for a biophysical assessment is discretionary, not mandatory. The Board finds that there is no requirement for a biophysical assessment to be completed if the Lands are within 0.8 km of ESAs. No variance in respect of s. 5.8.5(a) of the LUB is required.

[118] The Board declines to require the Applicants to conduct a biophysical assessment. The Board notes that the proposed development is a relatively small portion of the Lands (145.3 m^2

on a 3,400 m^2 parcel) and will be located on the rear of the Lands, away from Wabamun Lake. Although the Appellants cite their concerns about the impact to the nearby wetlands and the Wabamun Lake ESA due to the proposed development, the Appellants do not provide any evidence as to what specific impact the proposed development will have on the Wabamun Lake ESA and the wetlands. In the absence of such evidence, the Board is not convinced that a personal storage building will have a significant environmental impact on the Wabamun Lake ESA or the wetlands.

Does the proposed development comply with the applicable statutory plans?

[119] Finally, the Board must address whether the proposed development complies with the applicable statutory plans.

[120] The Appellant argued that the Lands are subject to the MDP and to the provisions of the MDP dealing with ESAs and therefore require a biophysical assessment.

[121] The MDP provides at Appendix 2 (Requirements for Technical Reports & Studies):

> *A desktop biophysical assessment may be required for simple subdivisions as well as any stripping, filling, excavation, grading activities, tree clearing, or creation of a pond or dugout if the proposed activities take place within or adjacent to an Environmentally Significant Area, High Priority Landscape, watercourse, wetland or water body. …*
>
> *A comprehensive biophysical assessment shall be required for all Area Structure Plans, Outline Plans/Conceptual Schemes, multi-parcel subdivisions, master site development plans, and resource extraction activities.*

[122] A comprehensive biophysical assessment is only required for Area Structure Plans, Outline Plans, Conceptual Schemes, multi-parcel subdivisions, master site development plans and resource extraction activities. The proposed development does not belong to any of these categories and therefore a biophysical assessment is not required.

[123] A desktop biophysical assessment <u>may</u> be required for stripping, filling, excavation or grading activities, tree clearing or creation of a pond or dugout if the proposed activities take place within or adjacent to an ESA or wetland. The Appellant gave evidence that there has been filling and grading activities occurring on the Lands in preparation for the proposed development, and in the absence of contrary evidence, the Board accepts this evidence.

[124] However, as under the LUB, the MDP does not mandate a biophysical assessment. The Board again declines to require a biophysical assessment from the Applicants for the reasons given at paragraph [118].

[125] The Appellants also argue that the MDP states that "land use should be managed from an ecological perspective" pursuant to s. 10.4 of the MDP (Surface Water, Groundwater and Wetlands). The Board has reviewed this section of the MDP and notes that the language in this section, where applicable to the proposed development, is broad and aspirational ("should", "whenever possible" or "where appropriate") rather than mandatory ("must" or "shall"). There are no mandatory requirements in the MDP applicable to the proposed development that the

Applicants must comply with.

[126] Other than the environmental concerns raised by the Appellants, no other issues of non-compliance with the MDP were raised.

[127] The Development Authority stated that the Lands are not subject to an Area Structure Plan or Area Redevelopment Plan. The Development Authority's evidence was not contradicted by any other evidence. In the absence of any contradictory evidence, the Board is prepared to accept that the Lands are not subject to an Area Structure Plan or Area Redevelopment Plan.

[128] As no biophysical assessment or other environmental reports are required under the MDP, and no other issues in respect of statutory plans were raised, the Board finds as a fact that the proposed development complies with the applicable statutory plans.

Conclusion

[129] Having considered the evidence and argument before it, the Board confirms the Development Permit and denies the appeal.

[130] While the Board has confirmed the Development Permit and denied the appeal, the Board wishes to remind the Applicants that they are still responsible for complying with the conditions and permit notes of the Development Permit, especially Conditions 1, 4, 5, 6 and 7, with which the Appellant expressed concerns of non-compliance:

CONDITIONS	
1.	The accessory building shall not exceed 8.0 m in height from the inside wall grade to peak of the roof.
4.	The proposed development shall conform to the stamped approved plans and shall not be moved, altered or enlarged except where authorized or directed through this permit approval.
5.	The accessory building shall be attractive in appearance, with facades that apply compatible and harmonious exterior finishing, where applicable, buildings shall comply with any architectural/design guidelines in an area structure plan.
6.	The site shall be kept in a neat and orderly manner.
7.	The area of the approved development shall be landscaped in a manner to prevent any surface run-off onto adjacent properties.

[131] Failure to comply with the conditions of the Development Permit may result in a stop order being issued or the Development Permit being cancelled or revoked pursuant to Condition 2 of the Development Permit.

[132] Issued this 21 day of October, 2024 for the Parkland County Subdivision and Development Appeal Board.

Barb Williams, Clerk of the SDAB, on behalf of B. Bundt, Chair
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to s. 688 of the Municipal Government Act, RSA 2000, c M-26.

APPENDIX "A"
BOARD MEMBERS

	MEMBERS
1.	B. Bundt, Chair
2.	L. Foy
3.	B. Jespersen
4.	C. Lamoureaux
5.	R. Wiedeman

APPENDIX "B"
REPRESENTATIONS

	PERSONS APPEARING
1.	Mardy Blackburn, Development Authority
2.	Aman Jhawer, Senior Planner, Development Planning
3.	Calvin Vandemark, Appellant
4.	Brenda Black, Agent on behalf of Calvin Vandemark
5.	Vince Giguere, Applicant
6.	Cindy Giguere, Applicant

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

October 7, 2024 Agenda Package			
	Description	Date	Pages
1.	Agenda Coversheet	Oct 7, 2024	1
2.	Table of Contents	Oct 7, 2024	2
3.	Notice of Appeal	Sept 10, 2024	3-7
4.	Notice of Permit Approved	Aug 28, 2024	8-9
5.	Hearing Notification	Sept 16, 2024	10-11
6.	Submissions of the Development Authority	Oct 1, 2024	12-50
7.	Submissions of the Appellant	Oct 1, 2024	51-160
8.	Submissions of the Applicant	Oct 1, 2024	161-175
9.	Additional Submissions of the Appellant	Oct 7, 2024	176-231
10.	Additional Submissions of the Applicant	Oct 7, 2024	232-234