

Appeal No.: SDAB 0262 008 2018  
Hearing Commenced: October 24, 2018

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: Karen Howley  
PANEL MEMBER: Petra Kitteringham  
PANEL MEMBER: Tyler Lacoste

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BETWEEN:

TRUE LINE CONTRACTING LTD  
Represented by Brian Steer (Developer)  
& Mike Samson (Owner)

Appellant

and

CITY OF RED DEER  
Represented by Beth McLachlan, Development Officer

Development Authority

**DECISION:**

The application for a development permit for a Dwelling Unit (conversion of an existing structure) on the Lands located at 37 Payne Close, legally described as Lot 13, Block 14, Plan 762 1934, Red Deer, Alberta is approved and the permit shall be issued by the Development Authority subject to the following conditions:

1. The development permit shall not be deemed completed based on this approval until all conditions except those of a continuing nature, have been fulfilled.
2. All development must conform to the conditions of this permit and the approved plans and any revisions as required pursuant to this approval. Any revisions to the approved plans must be approved by the Development Authority.
3. The Appellant shall repair or reinstate, or pay for the repair or reinstatement, to original condition, any public property, street furniture, curbing, boulevard

landscaping and tree planting or any other property owned by The City of Red Deer which is damaged, destroyed or otherwise harmed by development or construction on the site. Repairs shall be done to the satisfaction of the City of Red Deer, in the event that The City of Red Deer undertakes the repairs the Appellant shall pay the costs incurred by The City of Red Deer within 30 days of being invoiced for such costs.

4. The Appellant must ensure that the materials and finish of the proposed development complement the existing detached dwelling.
5. The Appellant and the Development Authority shall enter into an Agreement, registrable at Land Titles, which restricts the dwelling to be used exclusively by the Appellant's mother in law. The Agreement must contain the following conditions, as well as any other clauses necessary to ensure compliance and to give effect to the Agreement:
  - (a) The Dwelling Unit shall be used exclusively by the Appellant's Mother in Law;
  - (b) The City has the right of access to inspect the Property at all reasonable times on 24 hours' notice to the Appellant;
  - (c) The Appellant agrees to stop the use as a Dwelling Unit within 60 days from the date the Mother in Law ceases to live there;
  - (d) To ensure use of the Dwelling Unit is not re-commenced, the Appellant agrees to return the Dwelling Unit back to an Accessory Building by removing the kitchen and bathroom facilities within 60 days from the Mother in Law ceasing to live there.

The reasons for the decision follow.

#### **JURISDICTION AND ROLE OF THE BOARD**

1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, RSA 2000, c M-26 (MGA) as amended, in particular s. 685(4) and 687.
2. The Board is established by The City of Red Deer, By-law No. 3487/2012, *Appeal Boards Bylaw* (October 29, 2012). The duty and purpose of the Board is to hear and make

decisions on appeals for which it is responsible under the MGA and The City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).

3. None of the parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
4. There were no preliminary issues for the Board to decide.
5. The Board entered the following as Exhibits:

A1:	Hearing Materials	29 pages
B1:	Respondent Report	38 pages
B2:	Sample Agreement	2 pages
C1:	Appellant Submission	3 pages, 3 maps/drawings and 4 colour photographs

**BACKGROUND:**

6. On September 30, 2018 the Development Authority denied an application by the Appellant for a Dwelling Unit on the lands located at 37 Payne Close, legally described as Lot 13, Block 14, Plan 762 1934, Red Deer.
7. The lands are zoned R1 Residential (Low Density) District in which Dwelling Units are listed as a Permitted use.
8. In the application, the Appellant proposes to convert an existing Accessory Building (the "Detached Garage") into a Dwelling Unit. The definition of a Dwelling Unit in the LUB is: *"a self-contained building, whether occupied or not, usually containing cooking, eating, living, sleeping and sanitary facilities and used or designed to be used as a permanent residence by a household"*.
9. The Development Authority refused the application for two reasons:
  - 1) The location of the existing Accessory Building does not comply with the LUB regulations for the location of a Dwelling Unit and would require a 6.53m (87%) variance to the Rear Yard Minimum setback; and
  - 2) An Accessory Building may not be used as a Dwelling.
10. On October 03, 2018 the Appellant filed an appeal with the Board.

## SUMMARY OF EVIDENCE AND ARGUMENT:

### *The Development Authority*

11. The Development Authority provided the LUB definitions for a Dwelling Unit (see above) and an Accessory Building which is: *"a secondary building on a site, the use of which is subordinate and incidental to that of the principal building and includes a garage, carport, greenhouse, playhouse, treehouse, tool shed, garden shed or workshop but does not include a temporary building"*.
12. The Development Authority stated that the LUB prohibits an Accessory Building from being used as a dwelling unit.
13. The Development Authority stated that once developed, the proposed development would comply with the definition of Dwelling Unit under the LUB.
14. The Development Officer assessed the development permit application against the R1 Residential (Low Density) District Regulations found in s. 4.1 of the LUB that speak to the permitted and discretionary uses on an R1 Site.
15. The Development Authority further stated that section 4.1(2)(c) of the LUB implies that it is possible to have more than one Dwelling Unit on a Site.
16. However the placement of the existing Accessory Building does not comply with the setback regulation for a Dwelling Unit. A Dwelling is required to be 7.5 m from the rear property line and the existing Detached Garage is 0.97 m, therefore the proposed development would require a variance of 6.53 m (87%). The Development Authority considered this to be excessive.
17. The Development Authority spoke to area landowner concerns and noted that this application was materially different from the application that came before the Board in August 2018. As such, the Development Authority was able to consider the current application as a new application. Similarly the Development Authority addressed the concern that the Pines area was a single family dwelling neighbourhood only, and noted that there is no neighbourhood in the City of Red Deer designated as a single family dwelling neighbourhood.

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***The Appellant***

18. Brian Steer of True-Line Contracting Ltd. spoke on behalf of the Appellant. He addressed the intent of the application as a conversion of the existing detached garage into a detached dwelling unit for the personal use and occupation of the home owner's mother in law.
19. The Appellant submitted that the variance required to the set back requirements was on the south side of the proposed development only, which faces onto a green space.
20. The Appellant is amenable to a caveat being placed on the relevant land title to ensure the intent of the detached dwelling unit is accurately recorded on title.
21. The Appellant stated that he believes that the conversion of the existing Detached Garage would improve the curb appeal of the property as the existing Detached Garage driveway is to be removed and landscaped to match the rest of the side yard.

**FINDINGS AND REASONS**

22. The Board asked the Development Authority to provide submissions in relation to the restriction in s. 2.13 of the LUB which prevents an applicant from bringing an application for a development permit within 6 months of a similar application. The Board accepts the Development Authority's submission that this application was considered to be significantly different from the Appellants application earlier this year, as this application required the Development Officer to consider and apply different sections of the LUB.
23. Detached Dwelling Units in an R1 District are a permitted use. This was not contested.
24. The Board finds that the existing Accessory Building will not be used as a Dwelling Unit. The Appellant has made an application for a development permit to convert the Accessory Building into a Dwelling Unit. The Appellant is not seeking to have a dwelling unit use approved within the existing Accessory Building, the application is for the relevant conversion (from an Accessory Building Use to a Dwelling Unit use) in order for the proposed development to conform with the Dwelling Unit requirements and regulations set out in the LUB.
25. The Board reviewed the definition of a Dwelling Unit in the LUB and also considered s.4.1(2)(c) of the LUB and finds that the proposed development does comply with the relevant requirements set out in the LUB, except the rear yard set back requirements.

26. The Board reviewed the circumstances under which it can grant a variance to the set back requirements, as set out in s. 687(3)(d) of the MGA which states that in determining an appeal, the Subdivision and Development Appeal Board:

- (d) may make an order or decision or issue or confirm the
  - (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.

27. The Board finds that the requested variance is appropriate for the following reasons:

A. The existing dwelling has ample parking (RV parking pad and on the driveway); the side of the property that requires the variance backs onto a green space; and the conversion of the detached garage to a detached dwelling unit will not alter the height or square footage of the existing building, therefore the proposed development would not interfere with the amenities of the neighbourhood, as the existing building is there only the use is changing.

B. When it considered whether or not the proposed development would materially interfere with the use, enjoyment or value of the neighbouring parcels of land, the Board turned its mind to the objections brought forward by neighbouring land owners which included:

- Conversion of the Accessory Building (Detached Garage) to a dwelling unit would be precedent setting and allow for similar applications in a single family dwelling neighbourhood.

Having considered the materials and submissions provided to the Board the Board finds that the approval of a development permit in this circumstance and with these conditions will not create a precedent in making decision. Decisions of the Board are not binding for other developments and the Development Authority confirmed that each application for a development permit is looked at on a case by case basis.

- The proposed development will be used as a rental unit in the future.

The Board finds that by requiring the Appellant and the City to enter into an agreement addressing the intent of the use of the Dwelling Unit and registering that use as a caveat on the land will be sufficient to address this concern. The Board was persuaded on reviewing Exhibit B2 that a similar agreement to that presented would be sufficient in these particular circumstances.

- The proposed development will decrease the value of neighbouring properties.

The Board finds that, without evidence in relation to the effect on neighbouring property values, it cannot place any weight on concerns that neighbouring property values may be impacted by the proposed development.

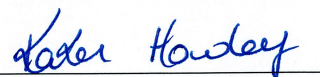
28. The Board accepts the Development Authority's submission that no neighbourhood in the City of Red Deer is designated as single family dwelling only.
29. The Board overturns the Development Officers decision, approves the appeal and grants the development permit subject to conditions as stated above.

**CLOSING:**

30. For these reasons, the application is approved with conditions as stated above.

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served **within 30 days** of this decision.

Dated at the City of Red Deer, in the Province of Alberta this 8<sup>th</sup> day of November, 2018 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



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K. Howley, Chair  
Subdivision & Development  
Appeal Board

EXHIBIT LIST

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