

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

PRESIDING OFFICER: MICHAEL KARTUSCH
PANEL MEMBER: CAROL MAH
PANEL MEMBER: DON WIELINGA

BETWEEN:

STELLA MCCAFFERY
Represented by Barbara McCaffery

Appellant

and

BARBARA CROSS

Applicant

and

CITY OF RED DEER
Represented by Debbie Hill, Development Officer

Development Authority

DECISION:

The Red Deer Subdivision and Development Appeal Board Confirms the decision of the Development Authority which approved the Applicant's application for a Development Permit for the Permitted Use of an Accessory Building (detached garage) at 71 Lougheed Close, Red Deer, Alberta. The application is conditionally approved with the following conditions:

1. A Development Permit shall not be deemed completed based on this approval until all conditions except those of a continuing nature, have been fulfilled to the satisfaction of the Development Officer.
2. All Development must conform to the conditions of this Development Permit and the Approved Plans and any revisions thereto as required pursuant to this Approval. Any revisions to the Approved Plans must be approved by the Development Authority.

3. The Applicant 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 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 undertakes the repairs, the Applicant shall pay the costs incurred by the City within 30 days of being invoiced for such costs.
4. The Applicant shall adhere to the conditions of the Development Permit DP084393, previously issued June 24, 2022.

A detailed summary of the decision is provided herein.

JURISDICTION AND ROLE OF THE BOARD

1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, R.S.A. 2000, c. M-26. (the MGA) as amended. Planning and Development is addressed in Part 17 of the MGA, and also in the *Subdivision and Development Regulation*, Alberta Regulation 43/2002 as amended (the SDR).
2. The Board is established by The City of Red Deer, Bylaw No. 3680/2022, *Red Deer Tribunal Bylaw* (April 11, 2022). 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 any member of the Board.
4. There were no preliminary issues for the Board to consider.

BACKGROUND

5. The subject property is located at 71 Lougheed Close, Red Deer, Alberta. The land is legally described as Lot 56, Block 18, Plan 032 3107 within the City of Red Deer.
6. The Applicant had originally been issued Development Permit DP084393, which included a height variance of 0.49 metres, for an Accessory Building (detached garage) at the subject property by the City's Development Officer on June 24, 2022.
7. After an inspection of the nearly completed Accessory Building by a City inspector, the maximum height of the Accessory Building was found to be higher than the height it was approved for in DP084393.
8. On August 10, 2022, the Applicant applied for a Development Permit for the same Accessory Building (detached garage) with an additional variance of 0.11 metres, for a total variance of 0.6 metres.
9. On October 12, 2022, the Municipal Planning Commission (MPC) issued Development Permit DP084822, subject to conditions, to the Applicant.
10. The Appellant filed an appeal of this decision to the SDAB on October 26, 2022.

11. The Board entered into evidence the documents found in Appendix A.

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Authority

12. The Development Authority stated that the proposed Development is for an over height Accessory Building, in this instance a detached garage.
13. The Development Authority stated that an Accessory Building is defined in section 1.3 of the LUB “*as 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.*”
14. The Development Authority noted that Accessory Buildings are a Permitted Use in the R1 zoning district and are subject to a number of regulations under the LUB.
15. The Development Authority stated that section 4.7(3)(i) of the LUB prescribes the maximum height of an Accessory Building as 4.5 metres.
16. The Applicant’s Development Permit application proposed a height of 5.10 metres for the detached garage. This required a variance to the relevant LUB requirements of 0.6 metres, which the Development Authority calculated as a 13.3% variance.
17. The Development Authority concluded that the variance was acceptable under the variance test outlined at section 687(3)(d) of the MGA and under Section 2.7(l)(i) of the LUB. The Development Authority stated the following in support of this finding:
- i. The height of the detached dwelling on the Site is 9.14 m which visually gives the house the appearance of being the dominant structure on the Site. The detached garage is a single storey and will not infringe on privacy of adjacent lots. The detached garage is compliant with all other standards of the LUB.
 - ii. The 0.6 (13.3%) variance to the Maximum Height was considered minimal. The higher Accessory Building would still maintain the residential character of the neighbourhood.
 - iii. Due to the two-storey dwelling on the Site, as well as the other two-storey dwellings in the immediate area, the Accessory Building would not seem out of place.
18. Aside from the maximum height variance requested by the Applicant, the Proposed Development complied with all other aspects of the LUB with respect to zoning, size, building coverage and setbacks.
19. The Development Authority stated that it cannot confirm any claims made by the Appellant with respect to any future property devaluation or impact on resale arising as a result of the detached garage.
20. The Site Plan submitted by the Applicant provided adequate information to review the proposed detached garage and Atco Gas confirmed there were no issues with supplying gas service to the detached garage.

21. The dimensions (length and width) of the constructed detached garage matched the Site Plan that was submitted and approved.
22. The Development Authority conducted a review of detached garages in the neighborhood and this review revealed another detached garage with a variance to the maximum height. In this additional case, it was determined that the detached garage had a maximum height of 5.03 metres.
23. The Development Authority stated that an Accessory Building is a Permitted Use in the LUB that can be used as both a garage to store vehicles and as a workshop.
24. The Development Authority stated that a review of R1 Zoning among other municipalities showed a growing trend of variance requests for detached garages, with an average variance request of 14.8%.
25. Should the Board uphold the approval of Development Permit DP084822, the Development Authority recommended that Board impose the same conditions set out in the original Development Permit DP084393.
26. The Development Authority issued Development Permit DP084822, allowing a total variance of 13.3%, on October 12, 2022.
27. The Development Authority circulated a notice of the approved permit to residents within a radius of 100 metres of the subject property. Letters supporting and opposing the permit were received by the Development Authority and these letters were included in the Development Authority submission. The Appellant had submitted a letter opposing the over height detached garage on September 2, 2022.
28. The Appellant filed an appeal of Development Permit DP084822 on October 26, 2022.

The Applicant

29. The Applicant purchased the subject property in March of 2022 and consulted the City regarding the zoning and development bylaws that needed to be followed.
30. In early June of 2022, the Applicant poured a concrete slab that formed the footprint of the detached garage without any comments or complaints from neighbors.
31. Construction of the detached garage commenced in early July of 2022.
32. Framing and inspection of the detached garage was completed July 13, 2022.
33. The inspection revealed that the maximum height of the detached garage as constructed exceeded the maximum height allowed in the Development Permit DP084822.
34. An investigation conducted by the Applicant revealed that the trusses supplied as part of the garage package had been altered by the manufacturing company and this alteration resulted in the trusses being taller than the trusses normally supplied in the garage package. The additional five inches of height did not result in any additional storage with the working area of the garage.

35. The Applicant stated the purpose of the higher detached garage structure was to store vehicles on a lift, leaving sufficient room floor space for their woodworking hobby. The Applicant stated there were no intentions to conduct a woodworking business and that it was in their best interests to ensure the detached garage did not pose any safety concerns or fire hazards.
36. By the time the concerns were brought forward by the City, the siding of the detached garage was substantially completed and the roof was already sheeted and shingled. Therefore, it was stated that the ability to make changes at that point were incredibly difficult, if not impossible.
37. The Applicant stated there was never any intention to exceed the maximum height outlined in Development Permit DP DP084393 and asked the Board to uphold the decision of the Development Authority for the 13.3% total variance.

The Appellant

38. The Appellant raised concerns regarding the accuracy and completeness of the Site Plan for the detached garage. Additionally, an issue was raised regarding the ability of emergency vehicles to service the immediate area due to the narrow alleyway.
39. The Appellant commented that the intent of the application was for the approval of a two-car detached garage without any mention of a woodworking workshop.
40. During the verbal submissions, the Appellant stated there were no major concerns with the height of the detached garage. A concern was raised regarding the significant footprint of the detached garage relative to the overall size of the subject property.
41. The Appellant questioned whether it was an expert or City employee that stated there would be no additional risk for the detached garage to be used for vehicle storage and woodworking.
42. The Appellant's main concern pertained to safety issues as researched on the Internet, namely the higher potential for fire or explosions to occur when fine sawdust particles are created in a confined area where gas or torches are used.
43. The Appellant wanted to ensure their safety concerns were noted and put on the record should a safety incident such as a fire or explosion occur.

FINDINGS AND REASONS

44. The LUB states that an Accessory Building is a permitted use in the R1 District.
45. In considering the Development Authority's submissions on definitions of an Accessory Building under the LUB, the Board notes that the Appellant did not raise an issue with those definitions and agrees with the Development Authority that the proposed Development is for an Accessory Building, detached garage.

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46. An Accessory Building cannot exceed 4.5 metres in height under the LUB.
 47. The proposed Development does not conform to the maximum height restrictions under the LUB, however in all other respects the proposed Development did comply with the requirements of an Accessory Building in the LUB.
 48. As such, the Board examined the Variance Test set out under Section 687(3)(d) of the MGA.
 49. In its own analysis the Board considered the following information from the Development Authority's written and verbal submissions:
 - i. The height of the detached dwelling on the Site is 9.14 m which visually gives the house the appearance of being the dominant structure on the Site. The detached garage is a single storey and will not infringe on privacy of adjacent lots. The detached garage is compliant with all other standards of the LUB.
 - ii. The 0.6 (13.3%) variance to the Maximum Height was considered minimal. The higher Accessory Building would still maintain the residential character of the neighbourhood.
 - iii. Due to the two-storey dwelling on the Site, as well as the other two-storey dwellings in the immediate area, the Accessory Building would not seem out of place.
 50. There were no submissions before the Board from any of the parties that the proposed Development would unduly interfere with the amenities of the neighborhood or that the proposed Development would materially interfere with or affect the use, enjoyment or value of neighboring parcels of land.
 51. The Appellant did not contest the information provided by the Development Authority in relation to the maximum height of the Accessory Building. The Appellant stated they were more concerned with the storage of vehicles containing gas with the combination of a woodworking area.
 52. Section 1.3 of the LUB provides a definition of an Accessory Building and the Board agrees the detached garage and woodworking workshop fit within the definition of an Accessory Building.
 53. The Board considered the issues raised by the Appellant and determined the Appellant was less concerned with the maximum height of the detached garage and more concerned with potential safety hazards of using the garage to store vehicles and perform woodworking activities that create sawdust.
 54. The Board identifies that any safety hazards would be identified through inspections conducted by Safety Codes Inspectors. Notwithstanding, the Board was satisfied that the Applicant's oversized sawdust collection device and flameless garage heating equipment would help mitigate any safety concerns.
 55. Considering the above, the Board agrees the proposed variance to the maximum height of the Accessory Building of 13.3% is minimal.

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56. An Accessory Building is a Permitted Use and, using the reasonings of the Variance Test above, the Board finds that the proposed Development would not unduly interfere with the amenities of the neighborhood nor materially interfere with or affect the use, enjoyment or value of neighboring parcels of land.

CLOSING:

57. For these reasons, the decision of the Development Authority is confirmed, and the application is approved with conditions as stated above.

Dated at the City of Red Deer, in the Province of Alberta, this 22nd day of December 2022 and signed by the Chair on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



Lori Stubbard (Board Clerk) on behalf of
Michael Kartusch, Chair
Subdivision & Development Appeal Board

This decision can be appealed to the Court of Appeal on 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.

APPENDIX A

Exhibit A.1:	Hearing Materials	22 pages
Exhibit B.1:	Development Authority Report	77 pages
Exhibit C.1:	Appellant Submission	6 pages
Exhibit D.1:	Applicant Submission	5 pages