

Appeal No.: SDAB 003 2025
Hearing Date: November 4, 2025

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

PRESIDING OFFICER: T. HEGER

PANEL MEMBER: S. CROOKS

PANEL MEMBER: D. WIELINGA

BETWEEN:

Ken Didychuk / 2008773 Alberta Ltd.
Represented by Ken Didychuk

Appellant

and

CITY OF RED DEER
Represented by J. Hallett, Senior Development Officer, E. Stuart, Manager, Inspections & Licensing,
and J. McBeth Associate City Solicitor

Development Authority

DECISION:

The Subdivision and Development Appeal Board overturns the decision of the Development Authority (the "DA") which Refused the Appellant's Development Permit ("DP") application for a House Suite at 5414 38 Street, Red Deer. DP088332 is 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 ensure that the approved parking is available for the exclusive and unrestricted use of the occupant(s) of the House Suite in accordance with City Regulations.
 - a. The site shall have a minimum of four (4) approved parking stalls, a minimum of two (2) of which shall be for the exclusive and unrestricted use for the occupant(s) of the House Suite.
 - b. A hard surfaced walkway is required from the house suite parking area to the house suite entrance.
 - c. Acceptable parking stalls include a driveway, attached garage, detached garage, or gravel parking area.
 - d. The minimum size of a parking stall is 2.7m wide by 5.5m deep.

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, RSA 2000, c. M-26 as amended (the “MGA”). Planning and Development is addressed in Part 17 of the MGA, and also in the Matters Related to Subdivision and Development Regulation, Alta Reg 84/2022 (the “SDR”).
2. The Board is established by the City of Red Deer, Bylaw No. 3680/2022, Red Deer Tribunals 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 Zoning Bylaw 3357/2024, May 13, 2024 as amended (the “ZB”).
3. None of the parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
4. The parties did not raise any preliminary issues for the Board to decide. The Board raised a preliminary matter described below. This matter was decided before proceeding to the merit portion of the hearing.
5. The Board indicated that it would first hear from the Development Authority, then the Appellant, then anyone else affected by the appeal. Following the submissions from the affected persons (if any), the Board provided the Appellant and the Development Authority an opportunity to respond to anything arising from the affected persons’ comments. There was no objection to the process as set out by the Board.
6. There were no affected persons present at the hearing to address the Board. The Board called for affected persons at appropriate time and there were none present.

BACKGROUND

7. On August 29, 2025, the Appellant submitted a Development Permit application for a proposed House Suite.

8. The subject lands are located at 5415 38 Street, Red Deer in the West Park (East) Neighbourhood.
9. The West Park (East) Neighbourhood is subject to a 15% cap for the number of House Suites / Backyard Suites as set out in the Zoning Bylaw.
10. On September 16, 2025, the DA, refused the application for the Development Permit on the basis that the 15% cap could not be varied.
11. On October 6, 2025, the Appellant submitted an appeal and requested the Board to vary the 15% cap for the Proposed House Suite in the West Park (East) Neighbourhood.

PRELIMINARY MATTERS***Preliminary Matter No. 1***

12. As part of the initial review of the materials, the Board noted that the DA made reference to a recent change in section 4.50.10 of the ZB which now states "The 15% maximum for the number of House Suites plus Backyard Suites set out in sections 4.50.5 and 4.140.5 shall not be varied." The DA's submission went on to say that the Board must comply with MGA section 687(3)(a.3) and stated "the Board "must comply with any land use bylaw in effect." The DA's submission concluded stating that refusal was the only possible outcome.
13. In reading this, the Board raised a preliminary matter asking the parties for submissions on whether it (the Board) had jurisdiction to hear the appeal.
14. The Board asked the parties if they were prepared to speak to this matter. The DA asked for a brief recess to contact their legal counsel and ask for advice. The Appellant did not object to the recess. The Appellant also stated that he was prepared to proceed. When the hearing re-convened, the DA asked for a recess to 2:00 PM so their counsel could be in attendance. The Appellant did not object and the Board granted the request.
15. Once re-convened, the DA's legal counsel was present and represented by the City of Red Deer's Associate City Solicitor, J. McBeth.
16. Mr. McBeth submitted that the variance powers removed in section 4.50.10 of the ZB were geared toward the DA and the Municipal Planning Commission and that they were not binding on the Board. He went on to say that the DA's position is that the matter before the Board is properly before the Board as an appealable matter pursuant to section 685 of the MGA. It is the DA's position that ideally the MGA and the land use bylaw/ZB be read harmoniously but, the cap described in the ZB was not binding upon the Board.
17. The Appellant made no further submissions.
18. The Board recessed and considered the arguments of both parties and found that it had jurisdiction to hear the Appeal. The Board proceeded with the merit portion of the hearing.

Preliminary Matter No. 2

19. As an additional preliminary matter, the Board identified portions of the DA's submission that pertained to personal identifying information of the Applicant / Appellant. Upon questioning, the DA stated that the documents were all provided as part of the initial application and included verbatim. The Appellant indicated his agreement with the personal nature of the information contained in the DA submission. The Board heard submissions on sealing the document from the public record to protect the personal information contained therein.
20. The Board concluded that the portions of the submission should be sealed. Thereby, the Board orders that the pages 11 to 117 inclusive of Exhibit D.1, the DA's submission, be sealed from the public record following the conclusion of this hearing. The Board further orders that no part of pages 11 to 117 inclusive of D.1 be produced for any reason unless so ordered by the Courts.

SUMMARY OF EVIDENCE AND ARGUMENT:***The Development Authority***

21. On August 29, 2025, the applicant submitted a Development Permit application for a proposed 1,055 sq. ft., three-bedroom House Suite at 5415 38 Street, Red Deer in the West Park (East) Neighbourhood. As part of his application, the applicant requested a variance to the 15% cap on the number of house suites permitted in each neighbourhood as set out in the ZB.
22. On September 15, 2025, Red Deer City Council passed new regulations pertaining to both House and Backyard Suites and added a clause in section 4.50.10 which states "The 15% maximum for the number of House Suites plus Backyard Suites set out in sections 4.50.5 and 4.140.5 shall not be varied.
23. On September 16, 2025, the DA, operating under the version of the ZB in effect at the time a decision is made, informed the applicant that his application could no longer be approved as the 15% cap could not be varied. The DA offered the applicant two options: he could cancel the application, or the DA could refuse the application. The applicant chose refusal, and a letter of refusal was sent via email and via post. A copy of the letter was included in the DA's submission as Appendix C.
24. On October 6, 2025, the Appellant submitted an appeal of the decision of the refusal provided by the Development Officer.
25. The Development Authority (the "DA") reviewed relevant sections of the MGA and the ZB.
26. The DA asked two questions to determine the application.
27. The first question asked was whether the DA had the authority to vary the 15% cap laid out in section 4.50.5 of the ZB. The DA found that it does not have the ability to vary the 15% as Council has explicitly withdrawn the variance powers for that matter. As discussed above, the DA further clarified that while the DA and MPC do not have the power to vary this limit, the Board is not bound by the same limit.
28. The second question asked was whether an application is subject to the version of the ZB in effect at the time of application or at the time a decision is made. The DA found that it is bound by the ZB in effect at the time the decision is made, not the version in effect when the application is made. Since the ZB was revised prior to the decision being made, the DA had no choice but to refuse the

application as the West Park (East) community was already above the 15% cap and approval of this application would only further exacerbate the overage.

29. The DA went on to conclude that the Development Officer “made the only decision permissible under The City of Red Deer Zoning Bylaw in reusing this application.”

The Appellant

30. The Appellant is the Applicant in this matter.
31. The Appellant submitted several documents including a written statement detailing why the application should be approved. This document totalled 3 pages and was entered as exhibit B.1. He also submitted an 18-page document detailing his past projects, and additional improvements already undertaken at the site. This document was entered as Exhibit C.1.
32. The Appellant went through his reasons for appeal and provided additional oral arguments in support of the appeal. The arguments included that he has successfully completed multiple second suites and house renovations in both Red Deer and the surrounding area. Because he invests in superior quality renovations, he is able to attract a higher quality tenant, which is a net positive for the community. His goal is to provide a much better product than some of the other house suites in Red Deer.
33. The Appellant stated that the neighbour of this property is supportive of the work the Appellant is doing to improve the existing house and of the addition of a basement suite.
34. The Appellant concluded his submissions, asking the Board to overturn the refusal and grant the DP “based on the superior quality, strict compliance, and clear community benefits provided in this evidence.”
35. In response to questions from the Board, the Appellant explained some of the photos provided in C.1 and clarified how the property would provide a total of five off street parking stalls for the use of the main tenant and secondary suite tenant.

Response from the Development Authority

36. The DA noted that the ZB does have the 15% cap and explained that just because no letters were received in opposition, it does not mean support of the community or the surrounding area.

Closing Arguments

37. To close, the DA reiterated that each application is evaluated and determined on its merits. The DA was bound by the 15% cap in the ZB and therefore had no choice but to refuse the DP application.
38. The Appellant closed with no further commentary.

FINDINGS AND REASONS

39. The Board reviewed the materials, oral presentations, and relevant sections of the ZB and MGA.
40. The Board finds that the Development Officer was within his rights in refusing the DP application for contravening section 4.50.10 of the ZB.
41. The Board then considered the application as presented. In order for the Board to vary, revoke, or substitute a decision of its own, it must find that the variance test in section 687(3)(d) is satisfied.
42. The first part of the variance test requires that the Board find that the proposed development would not unduly interfere with the amenities of the neighbourhood. The Board finds that the subject property has already undergone significant renovation and improvements from what was present at the time the applicant purchased the property. The addition of a House Suite at the subject property would not unduly interfere with the amenities of the neighbourhood as the same number of people could move in without a House Suite and live at the property. Therefore, the Board finds that the first part of the variance test is satisfied.
43. The second part of the variance test requires the Board to find that the proposed development would not materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land. The Board finds that the proposed development would improve the area and subject property by providing a quality in-fill to an ageing neighbourhood in an effort to help revitalize the area. It would also add more density within the building envelope while providing ample off-street parking.
44. The Board further finds that the five parking stalls to be provided for the property mitigates, if not eliminates, the impact on the neighbouring parcels as it allows the increase in residents to park off street. The Board considered that vehicles are an important tool for many Red Deerians and the off-street parking is an important commitment by the applicant to mitigate impacts on his neighbours. The Board finds that the proposed development will not materially interfere with the use, enjoyment or value of the neighbouring parcels. Therefore, the second part of the variance test is satisfied.
45. The third and final part of the variance test requires that the proposed development conforms with the use prescribed for that land or building in the land use bylaw. The subject property is zoned R-L: Residential Low-Density Zone in the ZB. The purpose of the R-L zone is to allow development of low-density housing and residential uses. Under section 6.10.2.5 of the ZB, a House Suite is a Permitted Use in the R-L zone. The Board finds that the proposed development conforms with the use prescribed for the subject lands in the ZB. Therefore, the third part of the variance test is satisfied.
46. The Board then considered the variance requested. In the subject case, the variance required is to section 4.140.5, which caps House Suites plus Backyard Suites at 15% for a neighbourhood.
47. The Board was provided with limited information about other House Suites in the West Park (East) neighbourhood. The Board considered the application and the proposed design as well as the impacts to the subject property and neighbouring properties should the appeal be granted.
48. The Board also considered the changes to the ZB which came into effect after the application was submitted but before a decision was rendered by the DA. While the Board finds that this timing is

unfortunate, it is not determinative of the appeal. Therefore, the Board considered the remainder of the appeal.

49. In consideration of the 15% cap identified for this neighbourhood with respect to House Suites, the Board is reminded of its preliminary matter outlined earlier in this decision. The Development Authority provided context for the interpretation of the ZB when read harmoniously with the MGA. The Board agrees with this interpretation and determined further analysis would be a warranted before using its statutory powers in the application of any variance. The Board was left to grapple with the ZB 15% factor and the implied intent for the management of infill development with respect to maintaining the character of this neighbourhood.
50. As discussed in the variance test section, the Board finds that this proposed development will bring a high quality in-fill to the West Park (East) neighbourhood. The Board further finds that it will mitigate impacts on the surrounding street by providing ample off-street parking, it will invest in the neighbourhood by providing a newly renovated housing option for Red Deerians, and it will increase the use of the property without unduly burdening the surrounding area with a careless increase in density. The Board finds that it should grant a variance to the 15% cap and substitute the decision of the DA with its own decision as noted above.

CLOSING

51. For these reasons, and in accordance with section 687(3)(d) of the MGA, the Board grants the variance to section 4.140.5 of the ZB. The decision of the Development Authority is revoked, and Development Permit DP088332 shall be issued subject to the conditions at the beginning of this decision.

Dated at the City of Red Deer, in the Province of Alberta, this 14th day of November, 2025 and signed by the Presiding Officer on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



T. Heger, Presiding Officer
Subdivision and Development Appeal Board

APPENDIX A

Exhibit A.1:	Hearing Materials	13 pages
Exhibit B.1:	Appellant Submission (part 1 of 2)	3 pages
Exhibit C.1:	Appellant Submission (part 2 of 2)	18 page
Exhibit D.1:	Development Authority Report	136 pages – Excluded pages 11 - 117

By order of the Board, Pages 11 – 117 of Exhibit D.1 will be sealed from the record and may not be produced for any reason other than by order of the Courts.