

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: M. Kartusch  
PANEL MEMBER: V. Foster  
PANEL MEMBER: K. Howley  
PANEL MEMBER: C. Mah  
PANEL MEMBER: G. Paradis

---

BETWEEN:

Michelle Quigg  
Represented by Brian & Michelle Quigg

Appellant

and

Laebon Developments Ltd.  
Represented by Kyle Cournoryer

Applicant

and

CITY OF RED DEER  
Represented by Beth Mclachlan, Development Officer

Development Authority

---

**DECISION:**

The Red Deer Subdivision and Development Appeal Board Confirms the decision of the Development Officer which approved the Applicant's application for a Development Permit for the Permitted Use of an Accessory Building (detached garage) at 45 Travis 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 must ensure that the materials and finish of the proposed development compliment the existing detached dwelling.

Notes:

a) Additional approvals further to this Development Permit, including, but not limited to, Safety Codes Permits and Business Licensing, may be required.

b) The detached garage shall not encroach into the Utility Right of Way. The water service valve or shut off valve must remain accessible and shall not be covered. Drainage is to be maintained and shall be directed to a public Right of Way and shall have no adverse effect on adjacent properties.

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 (the MGA) as amended. Planning and Development is addressed in Part 17 of the MGA, and in the Subdivision and Development Regulation, Alta Reg 43/2002 (the SDR).
2. The Board is established by The City of Red Deer, By-law No. 3619/2019, *Appeal Boards Bylaw* (April 1, 2019). 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. A potential conflict was disclosed by a Board Member due to a prior professional acquaintance of the Appellant but was considered immaterial by the panel. None of the parties had any objection to the constitution of the Board.
4. There were no preliminary issues for the Board to decide.

#### **BACKGROUND**

5. On August 24, 2021, the Development Officer approved the Applicant's Development Permit application for an Accessory Building.
6. The Appellant filled an appeal of this decision to the Subdivision and Development Appeal Board on September 10, 2021.
7. The Board entered the exhibits listed in Appendix "A" into the record.

**SUMMARY OF EVIDENCE AND ARGUMENT:**

*The Development Authority*

8. The Development Authority stated that the proposed Development is for an over height Accessory Building, in this instance a garage.
9. The Development Authority stated that an Accessory Buildings 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.”
10. The Development Authority noted that Accessory Building are a Permitted Use in the R1 zoning district and are subject to a number of regulations under the LUB.
11. In this instance, the Development Authority stated that section 4.7(3)(i) of the LUB prescribes the maximum height of an Accessory Building as 4.5 m.
12. The Applicant’s development permit application proposed a height of 5.36 m for the Development. This required a variance to the relevant LUB requirements of 0.86 m, which the Development Authority calculated as a 19% variance.
13. 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 proposed Development backs onto a proposed Collector Roadway.
  - ii. The variance was considered minimal.
  - iii. The proposed Development would not be out of place in the neighbourhood.
  - iv. No comments were received from immediately neighbouring properties in relation to the proposed Development.
14. The Development Permit with variance was approved on August 24, 2021.

*The Appellant*

15. The Appellant predominantly relied on their written submissions, which the Board had the opportunity to read and consider in advance of the hearing.
16. The Appellant noted that in making the decision to purchase their property at 38 Traynor Close, they had undertaken their due diligence to ensure they would have a certain level of comfort in their new home. This included some certainty as to the view and light that they would have access to in their property.
17. The Appellant stated that their property is constructed such that there are only street level views from the back of the property and no windows at the front of the property.

18. The Appellant stated that the proposed Development will impact the light the Appellant receives in their property and will obstruct the current view from their property.
19. The Appellant stated that the variance requested and approved by the Development Authority will cause this obstruction.
20. The Appellant fears that the proposed Development will be industrial looking and will not fit into the neighbourhood surroundings.
21. The Appellant noted that they were aware that an Accessory Building was a Permitted Use in the R1 district, but they did not see it's viability at 45 Travis Close given that there is no access through an alley or adjacent road.
22. The Appellant was concerned that due to the size of the proposed Development that the Accessory Building would in fact become the main dwelling as per the relevant definitions under the LUB.

*The Development Authority's Reply*

23. The Development Authority conducted a site inspection on September 20, 2021 and made the following observations:
  - i. The view from the Appellant's property would be obstructed even if the proposed Development did not require a variance due to the positioning of the Accessory Building.
  - ii. An adjacent property, 50 Travis Close, has planted trees that when in full bloom and mature will further obstruct the Appellant's view from their property.
24. The Development Authority noted that the site inspection supported its decision to grant the Development Permit with the requested variance.
25. The Development Authority stated that the proposed Development is large but is not industrial and will compliment the surrounding neighbourhood.
26. The Development Authority noted that the proposed Development is smaller in size than the Detached Dwelling and cannot be considered as the main dwelling. The proposed Development will be used to store vehicles.
27. The Development Authority stated that the placement of an Accessory Building is regulated under Section 3.5(4) of the LUB which does not prohibit front access to an Accessory Building.

*Additional Area Land Owner*

28. One area landowner provided a brief written submission in support of the proposed Development.

*The Applicant*

29. The Applicant noted that before submitting applications for Development Permits their Design Team will review inquiries from potential Home Owners and Owners regarding anything they would like to add. Upon completion of the review the Design Team felt that the variance request for the proposed Development would not impact the community in any negative way. At that point they moved forward with the application to the Development Authority. Further adding that they are currently building the same Accessory Building with the same height in the opposite end of the community as well in Tory Close, south of the proposed Development with no negative feedback from the other Home Owners.

**FINDINGS AND REASONS**

30. An Accessory Building is a permitted use in the R1 District.
31. An Accessory Building cannot exceed 4.5 m in height under the LUB.
32. The proposed Development does not conform to maximum height restrictions under the LUB, however in all other respects the proposed Development did comply with the requirements of the LUB.
33. As such, the Board engaged itself in the variance test set out under Section 687(3)(d) of the MGA:

*“(3) In determining an appeal, the subdivision and development appeal board  
.....;*

*(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.”*

34. There were no submissions before the Board from any of the parties that the proposed Development would unduly interfere with the amenities of the neighbourhood. As such, the Board finds that that the proposed Development will not unduly interfere with the amenities of the neighbourhood.
35. The Board considered the issues raised by the Appellant as those concerns relate specifically to the Appellants enjoyment of their property.
36. The Board acknowledges the Appellant’s concern that the allowed variance of 19% is significant. The Appellant noted that the increase in the height requested in the proposed Development would lead

to a restriction in the Appellant's view from their property and it would obstruct the light entering the property.

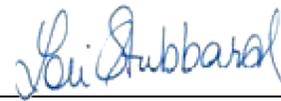
37. The Board finds that the increase in height in the proposed Development amounts to approximately 2.5 feet and in this circumstance is minimal, given the location of the Appellant's property.
38. The Board finds that the proposed Development would not materially interfere with the amount of light entering the Appellant's property.
39. The Board is cognizant of the many items that can obstruct the view from a main floor window, in this case there is potential obstruction from trees planted in adjoining land. Furthermore, the Appellant's acknowledge that an Accessory Building, up to at least a height of 4.5 m (the allowable height under the LUB) could at some point be constructed at 45 Travis Close, and as such were aware of the possibility of further development that had the potential to obstruct their view at some point in the future.
40. The Board finds that the proposed Development does not materially interfere with the Appellant's view from their property.
41. The Board also considered the Appellant's assertion that the proposed Development would be industrial in nature. In this regard the Board accepts the Development Authority submissions that the proposed Development would in fact compliment the surrounding neighbourhood.
42. The Development Authority's position was supported by the Applicant who noted that similar structures already exist in the neighbourhood.
43. During questioning by the Board, the Appellants acknowledged that another similar Accessory Building within their neighbourhood did not cause them any concern and it was visually appealing.
44. The Applicant noted that the structure referred to by the Appellants was in fact the same dimensions as the proposed Development.
45. The Board therefore finds that the proposed Development will not detract from the aesthetics of the surrounding neighbourhood.
46. In considering the Development Authority's submissions on definitions of a Detached Dwelling and an Accessory Building under the LUB, the Board notes that the Appellant did not raise any further issue with those definitions and agrees with the Development Authority that the proposed Development is for an Accessory Building.
47. An Accessory Building is a permitted use and, under the variance test above, the Board finds that the proposed Development will not materially interfere with the Appellant's use, enjoyment or value of their land.
48. Finally, the Board further agrees with the Development Authority's submissions as they relate to the hierarchy of plans in a municipal planning context. The Board acknowledges the detailed research the Appellants undertook when considering purchasing a property but notes that the plans referred to in their submissions are subordinate to the requirements under the LUB and to the tests and exceptions set out under the Municipal Government Act.

**CLOSING:**

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

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.

Dated at the City of Red Deer, in the Province of Alberta, this 20<sup>th</sup> day of October, 2021 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.



---

For: Michael Kartusch, Chair  
Subdivision & Development Appeal Board

**APPENDIX A**

- Exhibit A.1: Hearing Materials (20 pages)
- Exhibit B.1: Development Authority Report (57 pages)
- Exhibit C.1: Appellant Submission (6 pages)