

Appeal No.: SDAB 0262 006 2018
Hearing Commenced: August 30, 2018

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: Petra Kitteringham
PANEL MEMBER: Tanya Handley
PANEL MEMBER: Karen Howley
PANEL MEMBER: Tyler Lacoste
PANEL MEMBER: Frank Yakimchuck

BETWEEN:

TRUE LINE CONTRACTING LTD
Represented by Brian Steer
& 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 Garden Suite (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 denied. 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	19 pages
B1:	Respondent Report	48 pages
C1:	Area Landowner submission received via email	1 page
C2:	Area Landowner submission hand delivered	1 page
D1:	Appellant Submission	9 pages
6. The Board recessed briefly to review the materials. Upon reconvening, Tanya Handley declared a personal conflict of interest and recused herself, stating that the Appellant's mother-in-law, who would reside in the Garden Suite, is a personal friend.
7. Section 9(2) of the *Appeal Boards Bylaw* prohibits the Board from sitting in even numbered panels. Board Member Tyler Lacoste stepped down from the hearing. Chair Petra Kitteringham, Board Member Karen Howley and Board Member Frank Yakimchuk sat for the remainder of the hearing.

BACKGROUND:

8. On July 30, 2018 the Development Authority denied an application by the Appellant for a Garden Suite on the lands located at 37 Payne Close, legally described as Lot 13, Block 14, Plan 762 1934, Red Deer.
9. The lands are zoned R1 (Residential Low Density) District in which Garden Suites are listed as a discretionary use.
10. In the application, the Appellant proposes to convert an existing detached garage into a Garden Suite. The definition of a Garden Suite in the LUB is: *"a small, temporary, portable, one bedroom dwelling unit limited to occupancy by elderly parents of the registered owner and located upon the same lot as an existing single detached residence occupied by such registered owner"*.

11. The Development Authority refused the application for two reasons: 1) converting the existing Accessory Building (detached garage) does not comply with the regulations of the LUB, as a Garden Suite is required to be temporary and portable, which the existing Accessory Building is not; and 2) an Accessory Building may not be used as a Dwelling.
12. On July 30, 2018 the Appellant filed an appeal with the Board on July 5, 2018.

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Officer

13. The Development Authority provided the LUB definitions for a Garden Suite (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"*.
14. The Development Authority stated that the LUB prohibits an Accessory Building from being used as a dwelling.
15. Notwithstanding that the application is non-compliant with the LUB, the Development Officer measured the application against the regulations for a Garden Suite found in s. 4.7(13) of the LUB and stated that, with the exception of the distance, the application meets the regulations.
16. The Development Authority submitted that the variance needed between the detached garage and the rear property line to comply with the regulations was minimal and therefore was not a consideration in the refusal.
17. In response to questions, the Development Authority stated that this would be the first Garden Suite permit issued in the City of Red Deer and that if approved as such, the Appellant would be required to enter into an agreement with the City prohibiting its use as a rental and would also be subject to annual inspections.
18. Four area landowners submitted written comments opposing the application on the basis that it could become a rental property in the future and would set a precedent in the neighbourhood to do the same. The Development Authority spoke to these, stating that it is possible that the landowners are not aware that the Appellant would be required to enter into an agreement with the City prohibiting the rental of the Garden Suite and that it would also be subject to annual inspections by the City. Further, when the mother-in-

law no longer occupies the Garden Suite, the Appellant would be required to restore the Garden Suite back to its prior state (a detached garage).

The Appellant

19. The Appellant stated that the intent is to provide his mother-in-law with her own space as she is always at the home, helping with the family (3 young girls).
20. The Appellant appealed the refusal on the basis that the driveway of the existing detached garage is too steep and unusable as a garage. In support of this, the Appellant provided several photos of the driveway and exterior of the garage (Exhibit A1 pages 5-7).
21. The Appellant stated that construction of portable dwellings are costly, that the detached garage is in perfect condition and it would make no sense to tear it down and replace it with a portable structure.
22. The Appellant provided a landscaping estimate and photos (Exhibit D1 pages 7-9) and explained that the exterior of the property would actually be improved by filling in the west side with rock and trees.
23. The Appellant proposes that the Garden Suite have its own fenced in parking along the side of the home and entry.
24. The Appellant stated that he respects the area landowners (whether for the application or against) and provided two letters in support of the application. The letters (Exhibit D1 pages 4-5) support applications for Garden Suites being considered on a case by case basis and indicate that the proposed Garden Suite would not be an eyesore, inconvenience to the neighbourhood or have an impact on traffic flow.

FINDINGS AND REASONS

25. Garden Suites in an R1 District are a discretionary use. This was not contested.
26. The Board reviewed the definition of a Garden Suite and finds that the existing structure does not comply with the definition of same in the LUB.
27. The Board reviewed the definition of Accessory Building in the LUB and finds that the existing structure is an Accessory Building. In accordance with s. 4.7(3) of the LUB, dwellings are not permitted in Accessory Buildings.

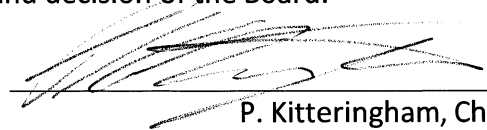
28. Plainly, the Development Authority was constrained by the provisions of the LUB. While the Board may vary a *regulation* in the LUB, the definitions are not part of the regulations. The Board finds itself to be similarly constrained.
29. The Board notes that the definition gives specific rules around the use (ex: small, temporary, portable), thus making the definition inflexible. If the definition were to outline parameters of the use in the definitions section, and impose the rules around the use (ex: small, temporary, portable) in the regulations, the Board would have been able to consider approval of the application. Given the definition, the Board must refuse the application.
30. Further, during its analysis, the Board considered the definition in the LUB for a Detached Dwelling Unit which is: *"a free standing residential building constructed on site and containing one dwelling unit"* together with s. 4.1(2)(c) which states:
- "Notwithstanding anything in this Bylaw, the development of more than one residential dwelling on lands zoned R-1, whether by bare land condominium or otherwise, shall be subject to site plan approval by the Development Authority"*
31. However, the use of these provisions of the LUB were not argued by either Party, nor was any evidence given that would support the use of them for this application, therefore it would be procedurally unfair for the Board to invoke them.

CLOSING:

32. For the reasons detailed above, the application is denied.

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 *06* day of September, 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.



P. Kitteringham, Chair
Subdivision & Development
Appeal Board

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