



REGIONAL MUNICIPALITY
OF WOOD BUFFALO

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

**NOTICE OF DECISION
OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

FILE NO. **SDAB-2015/014**

APPLICATION No.: **2015-VC-00042**

DEVELOPMENT: **Accessory Building – Detached Garage**

LAND USE DESIGNATION: **HR Hamlet Residential District**

LEGAL DESCRIPTION: **Lot 133, Plan 832 1550**

CIVIC ADDRESS: **174 Pine Lane, Conklin, Alberta**

IN THE MATTER OF AN APPEAL filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board pursuant to Sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26, the Appeal Hearing was held on Thursday, September 17, 2015 in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

BEFORE

K. Hughes, Chair
R. Bourgeau
F. Baiyewun
P. Klug
S. Schaffer
D. Secord

Administration:

J. Wall, Clerk, Subdivision and Development Appeal Board
A. Rogers, Legal and Legislative Services

PRESENT

For the Appellant:

D. Yesdresyski, Legal Counsel

For the Development Authority:

A. Layton, Development Officer
I. Contreras-Dogbe, Development Officer
T. Tester Supervisor, Development Control and Permitting

- [1] Following the introduction of the Board, the Chair confirmed with the parties in attendance that there were no objections to the constitution of the Board.

PRELIMINARY MATTERS

- [2] No preliminary matters were raised.

SUMMARY OF HEARING

- [3] This Appeal is related to the refusal to grant a Variance Certificate for an Accessory Building (Detached Garage). The area is zoned HR – Hamlet Residential District and an Accessory Building (Detached Garage) is a permitted use.
- [4] The Development Officer made verbal submissions with respect to her written report.
- [5] A Development Permit (2015-DP-001754) was submitted by the Appellant for an addition to a Single Detached Dwelling.
- [6] Upon review of the site the Development Officer determined that there was a second dwelling on the site, as well as an Accessory Building. The Accessory Building is a garage that was found to have been built larger than approved and also exceeded the maximum development standards for the footprint and height.
- [7] The Development Officer informed the Appellant that before any further development approval could be considered, the property must be brought into compliance with the Land Use Bylaw.
- [8] The Development Officer advised the Appellant that in order to achieve compliance the second dwelling on the site, which is not permitted, would need to be removed, and that a Variance Certificate would be required for the Accessory Building.
- [9] The Development Officer confirmed that the second dwelling has since been removed from the site, and that an application for a Variance for the Accessory Building was received on August 17, 2015.
- [10] The Development Officer noted that she has no objection to the granting of a Variance Certificate for the Accessory Building but that her own authority to approve a Variance is limited to 10% with respect to the height of the structure and she has no authority at all with respect to a Variance to the maximum footprint on the property of an Accessory Building. Because this Variance Application deals with the maximum footprint of the Accessory Building, it is outside of the authority of the Development Officer to approve. Hence it was refused.

- [11] The Development Officer recommended that the Board exercise its authority to overturn her decision [which she was required to make due to the limitation on the extent of her own authority] and approve the Variance Application. She advised that the Accessory Building will have little effect on the use, enjoyment and value of the surrounding properties.

Submission in Favour of the Appeal

- [12] The Board heard from D. Yesdresyski, Legal Counsel for the Appellant who stated that buildings of this size are not out of character for this area and that other properties in the area have similar sized Accessory Buildings.
- [13] Legal Counsel indicated that upon being notified that the property was not in compliance with the Land Use Bylaw the Appellant submitted the Variance Application in an attempt to meet the requirements of the Bylaw. He added that the requested variance is not excessive, and will not impact the surrounding area in a negative manner.

Submissions Opposed to the Appeal:

- [14] No one spoke in opposition to the Appeal

Questions from the Board

In response to questions from the Board:

- [15] Legal Counsel for the Appellant advised that the existing Accessory Building was constructed in 2014. He indicated that the current owner had a partner who was responsible for dealing with the property and developing it for business purposes. The current owner is attempting to comply with all the regulations and upon being notified that the property was not compliant, took steps to bring the property into compliance, including the removal of a number of buildings on the property. The Accessory Building is the last issue that needs to be addressed to bring the property into compliance.
- [16] The Development Officer confirmed that a development permit had been issued in 2006 for the construction of a 24' x 32' Accessory Building.
- [17] The Development Officer acknowledged that the existing 30' x 52' Accessory Building was constructed in 2014 and not in 2006 as first thought by Planning and Development, therefore it was constructed without a valid and subsisting building permit in place.
- [18] The Development Officer confirmed that the current Development Permit application 2015-DP-00754 is for an addition to a single detached dwelling, but could be revised to include an application for approval of the existing Accessory Building.
- [19] Upon conclusion of the verbal presentations the Chair asked the parties present if they felt that the hearing was conducted in a fair manner. No issues were brought to the Board's attention.

FINDINGS OF FACT

- [20] The Board makes the following findings of fact:
- a. The Property is zoned HR – Hamlet Residential District;
 - b. The Accessory Building for which a Variance was refused by the Development Officer is a permitted use;
 - c. The existing Accessory Building is twice the size of the Accessory Building approved under Building Permit (2006-0603);
 - d. The existing Accessory Building was constructed in 2014 and was not built in 2006 under the Accessory Building Permit (2006-0603) approved on July 24, 2006;
 - e. The existing Accessory Building was therefore unlawfully constructed because there were no approved plans presented to Planning and Development and therefore no subsisting development permits obtained from Planning and Development either;
 - f. The existing Accessory Building has not been subject to the required inspections and approval protocols to ensure compliance with Safety & Building Codes and other relevant municipal legislation or regulations.

DECISION

- [21] **The Subdivision and Development Appeal Board denies the appeal and upholds the decision of the Development Officer to refuse the Variance Application.**

REASONS FOR THE DECISION

- [22] There is no doubt from the evidence that the Accessory Building is not in compliance with the Land Use Bylaw in two important respects: (a) it was unlawfully constructed, since there was no Development Permit in place at the time of construction; and (b) the size of the Accessory Building exceeds the maximum allowed under the relevant Development Regulations.
- [23] Although the Development Officer advised that she has no objection to the Board overturning her decision, the Board is not prepared to give its approval at this time to the continued existence of a building that may or may not meet proper building standards and safety code requirements.
- [24] The Board has an additional, principled reason for its decision. The Appellant had an obligation to ensure that the Accessory Building was properly approved, and constructed in accordance with that approval, as well as with Municipal Bylaws. The Board is not prepared to issue a decision that would result in rewarding the Appellant for their failure to obey Municipal Bylaws.

- [25] The Board suggests that the Appellant re-apply for a Development Permit for the existing Accessory Building, which would then allow the Development Authority to insist upon the standard post-construction permit approvals, along with the required safety and building code inspections before occupancy of a new building is permitted.
- [26] Should the Appellant choose to go that route there would presumably at least be evidence to address the Board's concerns with regard to development permit approvals as well as safety and building code compliance.
- [27] This decision of the Subdivision and Development Appeal Board is final and binding on all parties, subject only to appeal to the Court of Appeal under Section 688 of the *Municipal Government Act*, R.S.A 2000, c. M-26

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 2nd day of October 2015.

CHAIR:



Kevin Hughes

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

EXHIBIT NO.	FILED BY	ITEM	DATE FILED
1.	Appellant	Notice of Appeal	08-21-2015
2.	Respondent	Planners Report	08-27-2015
3.	Appellant	Appellant's Evidence	09-10-2015

APPENDIX "B"

REPRESENTATIONS

PERSONS APPEARING

CAPACITY

- | | | |
|----|-------------------------------------|--|
| 1. | A. Layton | Development Officer, Planning and Development
Regional Municipality of Wood Buffalo |
| 2. | I. Contreras-Dogbe | Development Officer, Planning and Development
Regional Municipality of Wood Buffalo |
| 3. | T. Tester | Supervisor, Development Control
Regional Municipality of Wood Buffalo |
| 4. | D. Yesdresyski (via teleconference) | Legal Counsel for Appellant |