

NOTICE OF DECISION

FILE NO. **SDAB 2023-005**

APPLICATION No.: **2023-DP-00253**

DEVELOPMENT: **REFUSAL - Accessory Building 89m²**

LAND USE DESIGNATION: **SE – Suburban Estate Residential District**

LEGAL DESCRIPTION: **Lot 93, Block 1, Plan 852 1969**

CIVIC ADDRESS: **93 Community Lane, Fort McMurray, Alberta**

IN THE MATTER OF AN APPEAL filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board (“the Board”) pursuant to Sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (“the Municipal Government Act”), the Appeal Hearing was held on Thursday, October 12, 2023 in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

BETWEEN:

Brent Bryska (“the Appellant”)

-and-

The Regional Municipality of Wood Buffalo (“the Respondent”)

BEFORE:

D. Cleaver (Chair)

A. McKenzie

T. Morris

Administration:

S. Soutter, Clerk for the Subdivision and Development Appeal Board

JURISDICTIONAL HEARING

[1] At a Jurisdictional hearing held on September 6, 2023, the Board opened and set the merit hearing date as October 12, 2023.

MERIT HEARING

[2] In accordance with section 10 of the *Subdivision and Development Appeal Board Bylaw No. 18/021*, the Board sat in a panel of three members.

- [3] 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. No objections were raised.

Preliminary Matters

- [4] No preliminary matters were raised.

SUMMARY OF HEARING

Submission of the Development Authority.

- [5] On behalf of the Development Authority, Elias Biolley-Villalobos, Planner (“the Planner”) submitted that an application for an Accessory Building (7.31m x 12.19m) was received on August 1, 2023, for the property located at 93 Community Lane (“Subject Property”). Following a planning review of the property file, on August 8, 2023, the Development Authority informed the Subject Property owner, Brent Bryksa, the proposed accessory building along with existing accessory buildings on the Subject Property would exceed the maximum allowable site coverage for accessory buildings.
- [6] To support their submission the Planner submitted Exhibit 4 - Accessory Structure or Use Checklist. It is noted for the record that there were no objections to the Board accepting the Checklist. It was stated that accessory buildings are defined as, a building or use which is subordinate to, exclusively devoted to, and located on the same site as the principal building or use. Where a structure is attached to a principal building on a site by a roof, an open or enclosed structure, a floor or foundation, or any structure below grade allowing access between the building and the structure, it is considered part of the principal building and shall meet all the requirements of that building in accordance with section 10 of *Land Use Bylaw No 99/059* (the Land Use Bylaw).
- [7] It was submitted that the total area of accessory buildings on the Subject Property is approximately 318.35m² being:
- i. Accessory building known as treehouse is 13.40m²
 - ii. Accessory building known as Detached Garage is 106.95m²
 - iii. Proposed accessory building will be 89.00m²
 - iv. Accessory building known as two (2) Canadian Tire tents is 30.00m² (8 ft. x 20ft.)
 - v. Accessory building known as sheds is approximately 60.00m²
 - vi. Accessory building known as Quonset is approximately 19.00m²
- [8] Following consultation with the Appellant (Subject Property Owner) it was communicated that the sheds and Quonset would be removed to accommodate the proposed accessory building and the Canadian Tire tents are not permanent structures and will be removed. As such, the total area of the approved and proposed accessory buildings is 209.4m².

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- [9] The Planner noted that the Subject Property is in the SE – Suburban Estate Residential District and the Subject Property has a lot area of 0.806 hectares or 8,060m². The proposed accessory building meets the setback distances and height restrictions in accordance with sections 50.5 and 50.6(c) of the Land Use Bylaw.
- [10] It was further submitted the maximum site coverage for accessory buildings available to the Subject Property is 140.00m², because it is less than twelve percent (12%) of the lot area which is 967.2m².
- [11] Section 28.4(c)(ii) of the Land Use Bylaw states that *“the Development Authority may allow a variance to increase the permitted lot coverage by, up to two percent (2%) of the maximum lot coverage for accessory buildings”*. As the variance requested at 50% (89m²) is outside of the authority of the Development Authority, the Development Authority recommends that the Board allow the appeal and grant the required variance with the following conditions of approval:
- i. Removal of the temporary Canadian Tire tents.
 - ii. A site plan meeting the minimum standards, which is prepared by an Alberta Land Surveyor and/or Engineering Firm, and shall provide the following information:
 - a. Breezeway dimensions and details indicating the connection to the existing Detached Garage (36 ft. x 32 ft.)
 - b. All structures
 - c. Set back distances to all structures and property boundaries.
- [12] The Development Authority is of the view that the proposed accessory building conforms with the use of the Suburban Estate Residential District. Section 104.1 of the Land Use Bylaw states *“The purpose of this district is to provide for multi-lot (more than 3) country residential development with specific development criteria for the Hamlet of Sapræ Creek”*, and the Development Authority is of the view that the proposed accessory building would not:
- i. Unduly interfere with the amenities of the neighbourhood; and
 - ii. Materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.

Submission of the Appellant

- [13] Brent Bryksa, Appellant and Subject Property Owner submitted that the intent is for the proposed accessory building to have a breezeway connecting to the existing Detached Garage. The Appellant indicated he consulted with his neighbours and there were no concerns raised. Through questions of the Board, the Appellant confirmed he has no issue with the conditions proposed by the Development Authority.

[14] Upon conclusion, 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

[15] The Board makes the following findings of fact:

- a. Subject Property is located in the SE – Suburban Estate Residential District
- b. The proposed Accessory Building is a permitted use.
- c. The Subject Property has a lot area of 0.806 hectares or 8,060.00m²
- d. The proposed accessory building at 89.00m² meets the setback distances and height restriction as required under the Land Use Bylaw.
- e. The required variance of 50% is outside of the authority for the Development Authority to grant.

DECISION

[16] **It is the decision of the Subdivision and Development Appeal Board to UPHOLD the Appeal. Development Permit 2023-DP-00253 an application for an Accessory Building at 93 Community Lane is APPROVED.**

[17] **This approval is subject to the following conditions:**

- i. **Removal of the temporary Canadian Tire tents.**
- ii. **A site plan meeting the minimum standards, which is prepared by an Alberta Land Surveyor and/or Engineering Firm, and shall provide the following information:**
 - a. **Breezeway dimensions and details indicating the connection to the existing Detached Garage (36 ft. x 32 ft.)**
 - b. **All structures**
 - c. **Set back distances to all structures and property boundaries.**

[18] **All conditions contained within Development Permit 2023-DP-00253 and pursuant to section 27 of Land Use Bylaw 99/059 are upheld.**

Important Note:

[19] **In accordance with section 27.6 of Land Use Bylaw 99/059 construction must commence one year from Date of this Decision.**

REASONS FOR THE DECISION

- [20] The Board notes that its jurisdiction is found within Section 687(3) of the *Municipal Government Act*, RSA 2000, c.M-26 (the “MGA”). In making this decision, the Board has examined the provisions of the Land Use Bylaw and has considered the oral and written submissions of the parties.
- [21] An Accessory Building is a Permitted Use in the SE – Suburban Estate Residential District. Given that the Development is a Permitted Use, the only issue before the Board is whether the variance being sought satisfies this Board’s test under section 687(3)(d) of the MGA, Specifically, the Board must be convinced that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [22] There were no submissions received in opposition to the proposed Accessory Building or evidence provided to the Board to show that the Accessory Building will negatively impact the use and enjoyment of the surrounding properties or that the Accessory Building will not be subordinate to the principal dwelling.
- [23] Consultation with adjacent property owners conducted by the Appellant, indicate no objection to the proposed Accessory Building.
- [24] Based on the submissions from both parties and the proposed conditions put forward by the Development Authority, the Board is satisfied that allowing the variance for the proposed Accessory Building will not unduly interfere with the amenities or the use, enjoyment, or value of neighbouring parcels.
- [25] For these reasons the Board upholds the appeal and grants Development Permit 2023-DP-00253.
- [26] The 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 24 day
of October 2023.

CHAIR: Dean Cleaver
D. Cleaver

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

EXHIBIT NO.	ITEM	DATE FILED
P1.	Appellant's Response – Merit Hearing Scheduling (1 page)	2023-08-31
P2.	Municipality's Response – Merit Hearing Scheduling (1 page)	2023-09-01
P3.	Preliminary Board Decision (4 pages)	2023-09-06
1.	Subject Area Map (1 page)	2023-08-11
2.	Notice of Appeal (5 pages)	2023-08-09
3.	Planners Report (30 pages)	2023-10-05
4.	Accessory Structure or Use Checklist (4 pages)	2023-10-12

APPENDIX "B"

REPRESENTATIONS

Person Appearing	Capacity
Brent Bryska	Appellant
Elias Biolley-Villalobos	Development Authority Regional Municipality of Wood Buffalo
Lee-Ann Kumka	Development Authority Regional Municipality of Wood Buffalo