

## NOTICE OF DECISION

FILE NO. **SDAB 2024-001**

APPLICATION No.: **2024-DP-00082**

DEVELOPMENT: **Addition to Single Detached Dwelling**

LAND USE DESIGNATION: **ND – Neighbourhood District**

LEGAL DESCRIPTION: **Lot 2, Block 4, Plan 1220270**

CIVIC ADDRESS: **104 Ward Crescent, 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, June, 20 2024 in the Jubilee Centre Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

**BETWEEN:**

Saad Bachi (“the Appellant”)

-and-

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

**BEFORE:**

D. Cleaver (Chair)  
N. Mahgoub  
T. Morris

**Administration:**

H. Fredeen, Clerk, Subdivision and Development Appeal Board  
J. Brown, Clerk, Subdivision and Development Appeal Board

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**PRELIMINARY MATTER****BEFORE:**

D. Cleaver (Chair)

K. Carruthers

N. Mahgoub

T. Morris

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

[2] The Clerk noted for the record that the Appellant was not present for the hearing and that a request for a hearing adjournment was received earlier in the day at 3:21 p.m. from the Appellant. The email correspondence between the Appellant and the Clerk was marked as Exhibit P4.

[3] In the email correspondence, the Appellant requests that the Clerk provide him with a link to participate online.

*Could you send me a link to do it online please (Exhibit P4).*

[4] In response to the Appellant's request, the Clerk refers to the Board's Virtual Hearing Protocol document which states:

*"...requests for virtual participation must be received by the Clerk's Office at least 2 business days prior to the hearing." (Exhibit P4)*

[5] The Clerk further explains in her response that the two days' notice:

*"...allows us to ensure that we have the necessary IT personnel in place to support virtual attendance by a party. As the hearing was scheduled to occur in person (as per the hearing notification that was sent to the parties), we are unable to facilitate your request for virtual participation at this late hour.*

*If you are unable to attend the hearing in person, you may request to have the hearing adjourned to a later date by submitting a request for an adjournment and providing the reasons that you are unable to attend." (Exhibit P4)*

[6] In response to the Clerk, the Appellant submitted the adjournment request as follows:

*"As discussed, Please arrange to reschedule the hearing I am not aware you need to days' notice for online access." (Exhibit P4)*

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- [7] Upon questioning of the Board, the Clerk indicated that the location, date and time of the merit hearing was provided in the Preliminary Hearing Decision issued to the parties on May 22, 2024 (Exhibit P3).
- [8] The Notification of Appeal Hearing (Exhibit P5) which provides the location, date and time of the hearing was sent to the parties on May 23, 2024, via email and regular Canada Post mail.
- [9] The Clerk indicated that the Board's Virtual Hearing Protocol document is available on the Subdivision and Development Appeal Board webpage and was also provided to the Appellant on May 9, 2024 (Exhibit P6).
- [10] The Board then heard from the Development Officer who submitted that the Development Authority is prepared to proceed with the matter and urged the Board to consider the appropriate management of resources.
- [11] Upon further questioning from the Board, the Development Officer indicated that he did not support the adjournment request.

*Decision Preliminary Matter*

- [12] During closed deliberations, the Board considered the Appellant's adjournment request and his reason for the request.
- [13] It is the decision of the Subdivision and Development Appeal Board to deny the adjournment request for the following reasons:
- i. The Appellant did not provide the Board with sufficient reasons as to why he couldn't attend the hearing in person as scheduled;
  - ii. A request for hearing postponement was previously submitted by the Appellant in which the Board approved the rescheduling of the merit hearing (Exhibit P3);
  - iii. Notification of the merit hearing (Exhibit P5) was correctly issued to the Appellant and provided the location, date and time of the hearing; and
  - iv. The Board's Virtual Hearing protocol was provided to the Appellant.
  - v. The Board also considered the Development Officer's submission that he was not in support of delaying the merit hearing further.

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**MERIT HEARING**

- [14] Following the introduction of the Board, the Chair confirmed with the Respondent that there were no objections to the constitution of the Board.
- [15] Board Member K. Carruthers declared for the record that she lives on FOIP section 17(1). Although her residence falls outside of the 60 m notification radius of the Subject Property, she recused herself from the hearing to remove any perception of bias as the Appellant was not present to speak to her participation in the hearing.

**BEFORE:**

D. Cleaver (Chair)  
N. Mahgoub  
T. Morris

- [16] 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.

**Summary of Hearing***Submission of the Respondent*

- [17] Development Officer, Dave Stearman, introduced his report noting that Development Permit No. 2024-DP-00082, for an Addition to a Single Detached Dwelling, was applied for on March 27, 2024, and proposed changing the existing attached garage used for parking, into a living quarter (home gym).
- [18] The Development Officer noted that there was a great deal of discussion prior to the submission of the Development Permit application. Initial conversations included the probability of the Appellant developing the house into a Boarding House by converting the attached garage into a living quarter; however, because the Appellant has a legal Basement Suite, which requires two additional accessible parking stalls, and because a Boarding House would intensify the use of the development, further provisions of the Land Use Bylaw needed to be considered which was mentioned during initial telephone conversations with the Appellant.
- [19] The Development Officer indicated that the Appellant was aware of the development limitations on the property as well as the surrounding districts; however, the Appellant chose to submit a Development Permit application online after further conversations with another Development Officer within the Planning and Development Services Division.

[20] The Development Officer noted that the current development is not compliant with the Land Use Bylaw as the Subject Property does not meet the soft landscaping requirements of the ND – Neighbourhood District. He further noted that should the Appellant bring the Subject Property to compliance, it would still not meet the necessary requirements to facilitate an approval by the Development Authority based on Land Use Bylaw section 8.4.5.3.9 which states that a minimum of 30% soft landscaping is required to meet compliance standards within this district.

[21] The Development Officer indicated that a discussion was held with the Appellant to advise that a Boulevard Crossing Permit would be required to extend the driveway; however, the extension of the driveway would not provide the Subject Property with the necessary size, setbacks and soft landscaping requirements to ensure compliance. In addition, section 4.14.1 of the Engineering Servicing Standards (ESS) document states:

*“Driveways for Residential Single Detached lots shall be offset a minimum of 1.0 m from the side yard property line to the adjacent lot. The intermediate driveway side yard area is to be soft landscaped.”*

[22] The Development Officer submitted that through initial assessment and a site inspection, there is not enough space to facilitate the proposed development.

[23] Following the submission of a Boulevard Crossing permit application no. 2024-VU-0008, which was later refused, further interdepartmental reviews took place and concluded that the proposed development was not probable due to the limitations noted previously.

[24] The Development Officer noted that the Appellant is currently using unauthorized space on the Subject Property for parking as indicated on page 26 of the hearing package.

[25] The Development Authority has suggested to the Appellant that he could dissolve the Basement Suite to accommodate his growing family.

[26] Variance provisions noted within the Land Use Bylaw section 28.2 states:

*“The Development Authority may, subject to section 28.2, allow a variance and approve a development permit for permitted or discretionary use, with or without conditions which does not comply with the regulations of this Bylaw provided that....(ii) materially interfere with or affects the use, enjoyment or value of neighbouring parcels of land.”*

[27] The Development Officer submitted that the proposed development would impact adjacent property owners due to the intensification of the use, therefore a variance was not considered for the Development Permit application.

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- [28] Pursuant to *Municipal Government Act* section 687(3)(d)(i)(A) and (B), the Development Authority recommends that the decision of the Development Authority be upheld.
- [29] Upon conclusion of his presentation, the Development Officer submitted that should the Board approve the Development Permit Application, the following conditions be included:
- i. Ensure that the parking accessibility for all residents within the dwelling be maintained; and
  - ii. Ensure that soft landscaping including the standards outlined in sections 28, 38 and 46 of Community Standards Bylaw No. 21/010 be upheld.
- [30] Upon questioning of the Board, the Development Officer submitted the following:
- i. The definition of “soft landscaping” is any organic material which covers the original landscape. In the case of the Subject Property, crushed rock is not considered organic material, but grass would be considered.
  - ii. To calculate the soft landscaping and total surface coverage, the Development Authority uses various tools such as pictometry, site information provided by the Applicant and existing site plans. For this application, the Development Authority used the site plan provided by the Appellant. The calculations on page 26 of the hearing package were derived from the site plan that was included in the application.
  - iii. Upon review of the Appellant's calculations on page 10 of the hearing package, the Appellant's understanding of soft landscaping differs from the Development Authority as the Applicant understands the soft landscaping requirement would be met if he were to remove the accessory building and expand the driveway.
  - iv. Tandem parking is permitted in the ND - Neighbourhood District; however, the parking configuration shown on page 10 of the hearing package would not be compliant as it does not allow for probable accessibility to all units. To access the parking stall, you would need to drive over the soft landscaping. The Land Use Bylaw is very clear on how an accessible parking stall should exist.
  - v. Development Authority Supervisor, Lee-Anne Kumka, further submitted that the minimal size for parking stalls is 2.8 m x 5.8 m. In the rear yard, from the rear of the garage to the property line is 11.03 m. When you add 5.8 m plus 5.8 m, you get 11.6 m so they would not meet the requirement for two tandem stalls. With regard to the soft landscaping requirement, the Land Use Bylaw defines soft landscaping as:

*soft landscaping consisting of vegetation such as trees, shrubs, hedges, grass and ground cover.*

*hard landscaping consists of non-vegetative materials such as brick, stone, concrete, tile, and wood, but excluding monolithic concrete and asphalt in the form of patios, walkways, paths and parking lots.*

- vi. The increased intensity of use on the Subject Property proposed by the Appellant could only exist if the Appellant were to remove the existing basement suite which would remove the requirement for the two additional parking stalls.

[31] There were no verbal submissions in support of or in opposition to the appeal and no written submissions were received in support of or in opposition to the appeal.

[32] Upon conclusion, the Chair asked the Development Authority if they felt that the hearing was conducted in a fair manner. No issues were brought to the Board's attention.

### **Findings Of Fact**

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

- i. The Subject Property is located in the ND - Neighbourhood District.
- ii. The proposed development is an Addition to Single Detached Dwelling.
- iii. The proposed addition is a home gym to be located in the garage.
- iv. The use is a discretionary use;
- v. In accordance with Part 7, Parking and Loading Requirements of the Land Use Bylaw, four parking stalls are required on the site, two for the Single Detached Dwelling and two for the Basement Suite approved under Development Permit No. 2012-DP-02002.

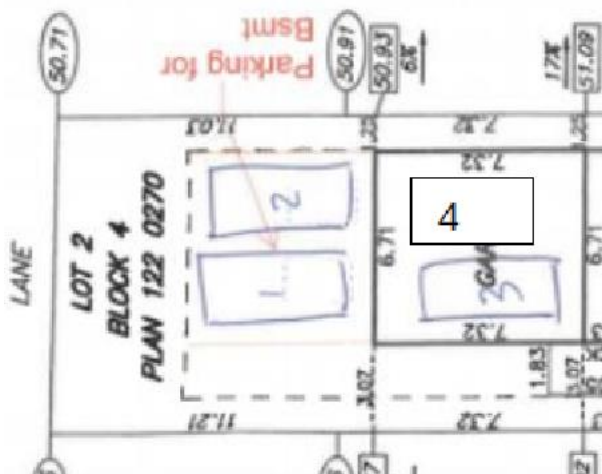
### **Decision**

[34] **It is the decision of the Subdivision and Development Appeal Board to DENY the Appeal. The application for an Addition to a Single Detached Dwelling is DENIED.**

### **Reasons for The Decision**

[35] 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 examined the provisions of the Land Use Bylaw and considered the oral and written submissions by and on behalf of the Respondent as well as the Notice of Appeal (Exhibit No. 1) submitted by the Appellant.

[36] The Board referenced the current parking configuration provided by the Appellant (Exhibit 1, page 11) and notes that parking stalls 1 and 2 are located on the parking pad and parking stalls 3 and 4 are located in the garage.



[37] The Board notes that the proposed development would remove parking stalls 3 and 4, located in the garage, and therefore the Board must determine whether the site can accommodate two additional parking stalls outside of the garage.

[38] With regard to the Basement Suite parking stalls, the Board considered discussion points 4 and 5 of the Planner's Report (Exhibit 3, page 20 which states:

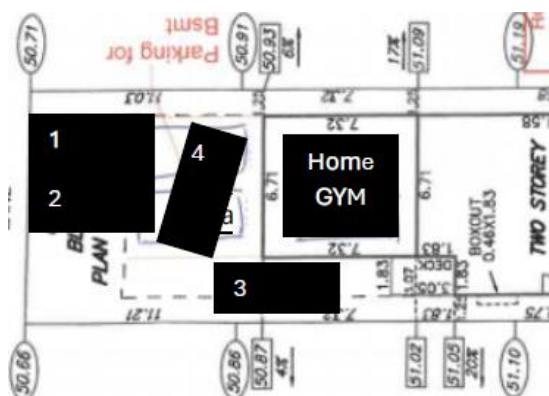
*"4. The total onsite parking stalls required for this development are 4 (2.3m W x 5.80m L)*

*“5. The development authority interprets this sections intention as a mechanism to provide safe, adequate, and spatially confirming parking for all additional users within a residential dwelling”*

[39] In the absence of the Appellant, the Board carefully reviewed the Appellant's submission (Exhibit 1, pages 9 - 16) which includes the Notice of Appeal and the reasons for the appeal as follows:

- i. *I don't have a yard in the house. The Back Ally Driveway can accommodate four vehicles. As per the proposed drawings, all dimensions were verified by professional engineers;*
- ii. *Verified that all green space calculations still have 19 sq meters of extra green space per scheduled calculation. Shed and gravel don't count. Subject to removal as per permit application pages 1 (page 11) and 3 (page 12); and*
- iii. *The current permit 2012-DP-02002 has two stalls for back-to-back parking. It is not clear why it is not accessible on Page 2.*

- [40] The Board saw no evidence of authenticated drawings (i.e. engineering stamp) which would support the Appellant's submission that the dimensions were verified by a certified engineer. Furthermore, there is no evidence noted in the illustrations, that Land Use Bylaw considerations such as parking stall size and parking stall accessibility were considered by the Appellant; however, the Board notes that it is not bound by the formal rules of evidence and therefore the Board relied on the drawings as a basis for its decision.
- [41] The Board referred to the Appellant's proposed parking scenario no. 1. (Exhibit No. 1, page 10 of the hearing package):



- [42] The Board first reviewed parking stall no. 4 and referenced Land Use Bylaw section 130.6 (a) which states:

*“For single detached and semi-detached dwelling, the required parking stalls shall be accessible from a public thoroughfare.”*

- [43] The Board also referenced Land Use Bylaw section 130.9 (c) which states:

### 130.9 Basement Suites

*(c) all on-site parking stalls shall remain accessible for parking by passenger vehicles at all times and shall be directly accessible to the street at all times.*

- [44] the Board is swayed by the Development Officer's argument that parking stall no. 4 is not feasible as the parking stall does not allow for probable accessibility to all units and is not directly accessible to the street as the driver would be required to drive over soft landscaping to access the parking stall.
- [45] The Board then examined parking stall no. 3 and notes that this proposed parking stall is not located on the approved parking pad and would therefore require the parking stall to *be surfaced with gravel, asphalt, concrete or a similar material* in accordance with section 130.6(b) of the Land Use Bylaw.

- [46] The Board must therefore determine if there is sufficient soft landscaping to allow for the surfacing of parking stall no. 3.
- [47] The Board reviewed the Land Use Bylaw definition of soft landscaping as:
- soft landscaping consisting of vegetation such as trees, shrubs, hedges, grass and ground cover.*
- [48] The Board notes that section 8.4.5.3.9 of the Land Use Bylaw requires a minimum of 30% soft landscaping in the ND – Neighbourhood District.
- [49] To determine if there is sufficient soft landscaping to accommodate parking stall no. 3, the Board reviewed the Appellant's soft landscaping calculations provided in Exhibit 1, page 10 of the hearing package and acknowledges that the calculations consider the removal of the existing gravel and Accessory Building (shed); however, without the Appellant being present to speak to the calculations, the Board is unable to accurately determine how the calculations were tallied and is therefore unable to rely on this evidence in making their decision.
- [50] The Board placed significant weight on the calculations provided by the Development Authority in Exhibit 3 page 26 of the hearing package, which indicates that the current development is not compliant as there is only 24.22% total landscape coverage. By surfacing the parking stall to accommodate parking stall no. 3, the soft landscaping would be reduced further even with the removal of the Accessory Building (shed) and gravel.
- [51] The Board further clarifies that the Land Use Bylaw does not permit soft landscaping to be used as a parking stall surface.
- [52] As the Board has determined that parking stalls 3 and 4 cannot be used as parking stalls, the Board did not consider the feasibility of proposed parking stalls 1 and 2.
- [53] The Board then considered parking scenario 2 (Exhibit 1, page 12) submitted by the Appellant as follows:



- [54] The Board looked at parking stall no. 4 and offers the same comments as above [42], [43] and [44].
- [55] The Board then considered parking stall no. 3 and notes that this stall is not located on the approved parking pad; therefore, this scenario would require an extension to the parking pad. The Board has already determined that there is not a sufficient soft landscaping allotment to be able to extend the parking pad and has therefore determined parking stall no. 3 in this scenario to be unfeasible.
- [56] As the Board has already determined that parking stalls 3 and 4 are not feasible, it did not consider the feasibility of parking stalls 1 and 2.
- [57] The Board considered the Appellant's comment that the "*current permit 2012-DP-02002 has two stalls for back-to-back parking. It is not clear why it is not accessible*" and offers the following comments:
- i. The current approved parking configuration (Exhibit 1, page 11 of the hearing package) reflects tandem parking which is permitted in the ND – Neighbourhood District provided that the parking stalls have the required setbacks and dimensions and can be accessed via the public thoroughfare (street). The current tandem parking configuration does not require the driver to drive over soft landscaping to access the parking stalls in the garage.
- [58] Based on the above, the Board is swayed by the Development Officer's argument that due to the increased intensity of the proposed development on the Subject Property caused by the lack of compliant parking stalls, the only way to accommodate the Addition to the Single Detached Dwelling, is by dissolving the Basement Suite thus reducing the requirement for two additional parking stalls.
- [59] 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.
- [60] You may appeal the Board's decision to the Alberta Court of Appeal within 30 days of the date the decision was issued. Court of Appeal sittings are held in Edmonton and Calgary and serve the entire Province of Alberta.

Edmonton Court of Appeal  
Law Courts  
1A Sir Winston Churchill Square  
Edmonton, AB T5J 0R2

Calgary Court of Appeal  
TransCanada Pipelines Tower, 2600  
450 – 1<sup>st</sup> St. SW  
Calgary, AB T2P 5H1

Dated at the Regional Municipality of Wood Buffalo in the province of Alberta, this 4<sup>th</sup> day  
of July, 2024

CHAIR:

**FOIP section 17(1)**

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Dean Cleaver

**APPENDIX "A"**

## DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

| EXHIBIT NO. | ITEM                                                     | DATE FILED     |
|-------------|----------------------------------------------------------|----------------|
| P1.         | Request for Postponement (2 pages)                       | May 1, 2024    |
| P2.         | Request for Postponement Response -Municipality (1 page) | May 15, 2024   |
| P3.         | Preliminary Hearing Decision (4 pages)                   | May 22, 2024   |
| P4.         | Request for Adjournment Correspondence (7 pages)         | June 20, 2024  |
| P5.         | Notification of Merit Appeal Hearing (2 pages)           | June 20, 2024  |
| P6.         | Correspondence re: Virtual Hearing Protocols             | June 20, 2024  |
|             | Subject Area Map                                         | April 30, 2024 |
| 1.          | Notice of Appeal (8 pages)                               | April 29, 2024 |
| 2.          | Development Permit Refusal (2 pages)                     | April 29, 2024 |
| 3.          | Planner's Report (27 pages)                              | June 13, 2024  |

**APPENDIX "B"**

## REPRESENTATIONS

| Person Appearing | Capacity                                                                |
|------------------|-------------------------------------------------------------------------|
| Dave Stearman    | Development Officer, Regional Municipality of Wood Buffalo              |
| Lee-Anne Kumka   | Development Authority Supervisor, Regional Municipality of Wood Buffalo |