

## **NOTICE OF DECISION**

FILE NO. **SDAB 2023-002**

APPLICATION No.: **2023-DP-00035**

DEVELOPMENT: **Accessory Building (297.68 m<sup>2</sup>)**

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

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

CIVIC ADDRESS: **1 Sapræ 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, May 4, 2023 in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

**BETWEEN:**

Chris Kozak (“the Appellant”)

-and-

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

**BEFORE:**

N. Mahgoub, Chair  
K. Carruthers  
D. Cleaver

**Administration:**

Heather Fredeen, Clerk for the Subdivision and Development Appeal Board  
Sonia Soutter, Manager, Legislative Services

**PRELIMINARY HEARING - JURISDICTIONAL MATTER**

- [1] At a preliminary hearing held via Microsoft Teams on April 13, 2023, regarding File No. 2023-002, it was noted by the Clerk, that an appeal was filed on March 24, 2023, against the Refusal of Development Permit No. 2023-DP-00035, an application for an Accessory Building (297.68 m<sup>2</sup>) for the property located at 1 Sapræ Crescent, Fort McMurray Alberta. Section 686(2) of the *Municipal Government Act* requires that the Subdivision and Development Appeal Board hold an appeal hearing within 30 days after receipt of an appeal.
- [2] In keeping with this requirement and all other statutory obligations, the next available date that that this appeal could be heard is May 4, 2023. As May 4, 2023, falls outside of the required 30 days, in order for the Board to maintain jurisdiction of the appeal, the hearing was opened and adjourned to May 4, 2023.

*MOVED by J. Laporte, that the appeal hearing for SDAB 2023-002 be opened and adjourned to May 4, 2023.*

**CARRIED UNANIMOUSLY**

**MERIT HEARING**

- [3] 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.
- [4] 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**

- [5] Prior to marking the exhibits, the Chair asked the Parties if there were additional items to be submitted into evidence, the Appellant indicated that he had four additional items he wished to submit. Two of the items were illustrations of the interior of a structure. The other was an excerpt from a proposed bylaw no. 21/003 and the fourth item was an undated email between the Appellant and his ward Council representative in relation to a proposed land use bylaw draft.
- [6] When prompted by the Chair if there was any opposition from the Respondent, regarding the additional items, the Respondent submitted no opposition to the two illustrations being marked as evidence.

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- [7] Prior to marking the exhibits, the Board provided the Respondent an opportunity to respond to the submissions, to which the Respondent requested clarification on which building the two illustrations were depicting, to which the Appellant indicated it is the interior of a 55 m<sup>2</sup> temporary structure (the Temporary Structure) located on the Subject Property (Exhibit 4, pg. 18).
- [8] The Respondent objected to the excerpt from proposed bylaw no. 21/003 and the email between the Appellant and his ward Council representative for the following reasons:
- i. The proposed bylaw no. 21/003 has not been adopted by Council as a land use bylaw and is therefore not valid.
  - ii. The email is from a Municipal Councillor who is at arm's length from the Municipality should not be considered when making a decision on a development permit application.
- [9] The Appellant spoke to the email from the Council representative and indicated that Exhibit 6 has been submitted only to show where the information came from and shows the direction which the Municipality will be taking with a new land use bylaw.
- [10] The submissions were marked as follows:
- Exhibit No. 4:** Illustration of interior of Temporary Structure located on the Subject Property (no ladder)
- Exhibit No. 5:** Illustration of interior of Temporary Structure located on the Subject Property (with ladder)
- Exhibit No. 6:** Land use bylaw no. 21/003 "Part 5 General Regulations – Accessory Structures" excerpt.
- Exhibit No. 7:** Undated email between Appellant and Ward Council Representative re: proposed land use bylaw.
- [11] The Board reserved making a decision on the new submissions from the Appellant and advised that the Board would address the materials in the Board's written Decision.

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## **SUMMARY OF HEARING**

### **Submission of the Respondent (Municipality)**

- [12] This Appeal is related to the Refusal of a Development Permit Application No. 2023-DP-00035, for an Accessory Structure (297.68 m<sup>2</sup>), located at 1 Saprae Crescent, Fort McMurray, legally known as Lot 1, Block 1, Plan 852 1969 (the Subject Property) (Exhibit 3 pg. 17).
- [13] The Development Officer, on behalf of the Respondent, began the proceedings with a verbal presentation of his written report (Exhibit 3, pg. 13) including a chronology of the Development Permit Application as follows:
- i. February 15, 2023 - The Development Permit Application was received.
  - ii. February 23, 2023 –the Appellant was notified that the proposed Accessory Structure, was non-conforming (Exhibit 3, pg. 33).
  - iii. March 8, 2023 – Development Permit Application was refused as the proposed Accessory Building does not conform to section 50.7(b) of Land Use Bylaw No. 99/059 (the Land Use Bylaw) (Exhibit 3, pg. 36).  
*50.7 In residential districts, the maximum site coverage for accessory buildings shall be:*  
*50.7(b) in all other residential districts, 12% of the lot area or 140 m<sup>2</sup>, whichever is less, for parcels under 2.0 hectares. For parcels 2.0 hectares and larger, the maximum site coverage of accessory buildings shall be 350.0 m<sup>2</sup>.*
  - iv. March 16, 2023 – Public Notice of the Development Permit Refusal was posted (Exhibit 4, pg. 39).
  - v. April 13, 2023 – A site inspection (Exhibit 3, pg. 41) was conducted from the public right of way, to confirm the aerial image (Exhibit 3, pg. 17).
- [14] The Respondent submitted that the Subject Property is located in Saprae Creek in the SE – Suburban Estate Residential District. In accordance with section 104.2 (a) of the Land Use Bylaw, accessory buildings are considered permitted uses in this district.
- [15] The Respondent provided the Land Use Bylaw definition of an accessory building as follows:

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*104.2 (a) An accessory building is 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.*

[16] The Respondent indicated that the Subject Property lot size is 10,027.65 m<sup>2</sup> which is approximately 1.0 hectare (Exhibit 3, pg. 26); therefore, the maximum site coverage that is permitted on the Subject Property is no more than 140 m<sup>2</sup> as it would be less than 12% of the lot area.

[17] Section 28.4(c)(ii) of the Land Use Bylaw provides the Development Authority the ability to vary the permitted lot coverage by 2% of the maximum lot coverage for accessory buildings; however, the variance required by the proposed Accessory Building is 112% which is beyond the variance power of the Development Authority. In addition, the proposed Accessory Building would not be subordinate to the principal building/use. the Respondent clarified the definition of “subordinate to the principal residence” as follows:

*“To treat or regard as of lesser importance, than something else.”*

The principal use of the Suburban Estate Residential District is residential dwellings; therefore, an accessory structure, should be subordinate to the principal dwelling.

[18] The Respondent submitted the following additional comments:

- i. the proposed Accessory Building meets building setback distances and height restrictions.
- ii. all required development permits on the Subject Property have been issued and remain valid, with the exception of the Temporary Structure.
- iii. An addition to the Single Detached Dwelling with the proposed size of 297.68 m<sup>2</sup> may be an option for the Appellant. (Exhibit 3, pg. 36)

[19] In conclusion, the Respondent advised, that the proposed development does not conform with the size requirements prescribed in the Land Use Bylaw and the required variance would impact the ability for the District to maintain its uniformity and character.

- [20] It was further submitted by the Respondent that should the Board allow the Appeal, the Temporary Structure which currently does not have a Development Permit, would add to the accessory building lot coverage for a total lot coverage on the Subject Property of 350 m<sup>2</sup>; however, this was not taken into account when refusing the Development Permit Application as the primary concern was the size of the proposed Accessory Building.
- [21] When asked by the Board if there were any other concerns other than the size of the proposed Accessory Building, the Respondent responded that there were no additional concerns.

### **Submission of the Appellant**

- [22] The Appellant began his presentation noting that he has been waiting for the new land use bylaw to be approved before building an accessory building on the Subject Property.
- [23] The proposed Accessory Building is intended to be a cold storage, gravel floor building, to store recreational vehicles, yard equipment, and other hobby items and would allow for a tidier yard and would deter theft.
- [24] The Appellant referred to an illustration of a similar accessory building (Exhibit 2, pg. 12) and indicated that the front facing side of the building facing the road, would have the same siding as the principal dwelling, and the garage door would also be painted to match the principal dwelling, adding that there is a 30 ft. setback from the adjacent properties to allow for trees.
- [25] The Appellant submitted that adjacent property owners were contacted and were made aware the plans to build the Accessory Building. There were no objections and many of those consulted indicated that the building would be beneficial and would act as a noise and visual barrier. (Exhibit 2, pg. 9).
- [26] The Appellant submitted that the proposed Accessory Building will not be used for commercial purposes; although the Appellant indicated that he does have a small H-VAC business of which all equipment is stored in the garage.
- [27] The Appellant referred to Exhibit 6 (Excerpt from previous proposed bylaw no. 21/003) and Exhibit 7 (letter from the Appellant's Council ward representative regarding a proposed land use bylaw re-write) indicating that in the proposed bylaw, the maximum size would be to be increased to 250 m<sup>2</sup> for a lot under 2 hectares and 350 m<sup>2</sup> for a lot over 2 hectares.

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- [28] The Appellant spoke to the written and verbal submission of the Respondent noting the following:
- i. (Exhibit 3, pg. 15, number 21) The principal dwelling is 581 m<sup>2</sup>, the proposed Accessory Building is 297.68 m<sup>2</sup> which makes this an acceptable ratio where the proposed Accessory Building would remain subordinate to the principal dwelling.(Exhibit 3, pg. 15, number 25) The Respondent noted that an addition to the Single Detached Dwelling, as suggested by the Development Authority, and a standalone Accessory Building of the same size would look exactly the same, only there would be an odd walkway and the addition would be taxable, whereas an accessory building is not.
  - ii. (Exhibit 3, pg. 15, number 27) The 12 m frontage of the proposed Accessory Building is all that can be seen from the road and therefore it would not negatively affect the character of the District.
- [29] The Appellant referred to an existing 55 m<sup>2</sup> Accessory Building (Temporary Structure) located on the Subject Property (Exhibit 3, pg. 18) and indicated that Exhibits 4 and 5 are interior photographs of the Temporary Structure which was intended to be a temporary solution for the storage of renovation material. The Appellant indicated that in 2014, the Planning and Development Department indicated that a permit would not be required for the Temporary Structure. The Appellant submitted that renovations took longer than expected but are nearing completion. Once the proposed Accessory Building is built, the shelving will be transferred from the Temporary Structure to the proposed Accessory Building and the Temporary Structure will be dismantled. The Appellant further submitted, that he would be prepared to dismantle the Temporary Structure should the Board make this a condition of approving the proposed Accessory Building.
- [30] The Appellant referred to the Site Inspection Form (Exhibit 3, pg. 20) which indicates that up to four commercial vehicles were observed on the Subject Property. The Appellant indicated that he has a service vehicle for his business, a personally owned pickup truck, and his wife occasionally drives a CNRL truck home from work. There is also a personally owned and used dump truck which has been used to assist with renovations and will likely be sold once renovations are complete.
- [31] Through questioning by the Respondent, the Appellant submitted that the name of his business is Reliable Mechanical Services Ltd., and he does have a valid Home Business Development Permit.

- [32] Through questioning of the Board, the Appellant indicated that he would obtain all necessary building permits and a contractor will be hired to construct the Accessory Building.

### **Submissions in Favor and Opposed to the Appeal**

- [33] There were no written or verbal submissions received in favor or in opposition to the appeal.

### **Closing Comments from the Respondent**

- [34] The Respondent referred to the Temporary Structure and clarified that it is an Accessory Building and does require a Development Permit in accordance with the Land Use Bylaw.
- [35] The Notice of Appeal (Exhibit 1, pg. 2) provides the reason for the Appeal as follows:

*Accessory Building size is changing in new Bylaw. Current size does not fit with location or needs of residents.*

The Respondent indicated that the current proposed land use bylaw is available on the Municipality's website at [participate.rmwb.ca/LUB](https://participate.rmwb.ca/LUB). The Appellant has been referring to a draft land use bylaw from February 2021. The size of the Accessory Building would remain in contravention of the proposed land use bylaw as the maximum amount for an accessory building is proposed to be 250 m<sup>2</sup> for a parcel under 2 hectares. It would remain outside of the Development Authority's variance power to approve. In addition, bylaw 21/003 as referred to by the Appellant, and the draft land use bylaw that is posted on the Municipality's website, are not valid as they have not been approved by Council and considering them would be in contravention of the *Municipal Government Act* and municipal statutory policies.

- [36] The Respondent referred to the Temporary Structure on the Subject Property and the existing commercial vehicles that were present during a site inspection and clarified the definition of "Commercial Vehicle" as a gross vehicle weight of more than 7000 kg. An aerial image as provided in Exhibit 3, pg. 17, depicts numerous commercial vehicles and construction materials on the Subject Property, which are considered prohibited objects as they are unsightly and affect the amenities of the district.



- [37] The Respondent referred to a previous Subdivision and Development Appeal Board Decision SDAB 2017-009 at 145 Janke Lane in which the Board upheld the Decision of the Development Authority in refusing an Accessory Building as it measured 100 m<sup>2</sup> and the total existing accessory buildings had a lot coverage that exceeded the allowable lot coverage of 140 m<sup>2</sup>.

### **Closing Comments from the Appellant**

- [38] The Appellant reiterated that in 2014, the Development Officer, did not define the Temporary Structure as a building.
- [39] The Appellant indicated that he has a construction permit for the Subject Property which would explain why there are commercial vehicles onsite. The renovations are nearing completion which is why the Development Permit Application for the Accessory Building was submitted, to clean up the site and store unsightly items.
- [40] Upon conclusion, the Chair asked the parties present, if they felt that they had sufficient opportunity to present their evidence. No issues were brought to the Board's attention.

### **FINDINGS OF FACT**

- [41] The Board makes the following findings of fact:
- a. The Property is zoned SE – Suburban Estate Residential District.
  - b. The Proposed Development is an “Accessory Building (297.68 m<sup>2</sup>).
  - c. The use is a permitted use in the SE – Suburban Estate Residential District.
  - d. The variance required is outside of the variance authority of the Development Officer.

### **DECISION**

- [42] **It is the decision of the Subdivision and Development Appeal Board to allow the appeal. The application for an Accessory Building (297.68m<sup>2</sup>) is APPROVED. The Board adds an additional condition as follows:**
- i. **The non-compliant 55 m<sup>2</sup> Temporary Structure located on the Subject Property, must be removed from the Subject Property no later than September 30, 2023.**
- [43] **All further conditions pursuant to section 27 of Land Use Bylaw 99/059 are therein upheld.**

**Important Note:**

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**

[44] 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 Appellant and the Respondent.

[45] 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*

*(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*

[46] The Board is satisfied that allowing the variance to the proposed Accessory Building will not unduly interfere with the amenities or the use, enjoyment, or value of neighbouring which can be demonstrated by the following submissions:

- ii. The proposed location (near the rear of the property) and orientation of the proposed Accessory Building is uniquely situated where only 12.2 metres of the proposed Accessory Building frontage can be seen from the street. 30-foot setbacks to the side and rear of the Accessory Building abutting adjacent properties, have been incorporated into the building plans to allow for tree growth and the siding and overhead doors of the Accessory Building will match that of the principal dwelling.
- iii. Consultation of adjacent property owners conducted by the Appellant, indicate no objection to the proposed Accessory Building and in fact suggest that they favor the proposed development as it would create a visual and sound barrier.
- iv. 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.

- v. No additional concerns were put forward by the Respondent regarding the proposed Accessory Building other than the sheer size.

- [47] As there was no opposition submitted by the Respondent with regard to Exhibits 4 and 5, the Board accepted the illustrations as evidence; however, the Board gave little weight to the illustrations as they depict the interior of a Temporary Structure, which is not the subject of the appeal.
- [48] The Board is a quasi-judicial body independent from the Municipality, Municipal Council and the Planning and Development Department. In reviewing the submissions Exhibits 6 and 7 of the Appellant, the Board finds that the information contained in Exhibit 6 is from a 2021 land use bylaw draft. Exhibit 7 is referring to a draft land use bylaw re-write. Based on this, the Board can only consider the legislation this it is in place at the time of the appeal; therefore, the Board strikes Exhibits 6 and 7 from the record.
- [49] The Commercial and construction activity occurring on the Subject Property is not merit to this appeal; therefore, this was not a consideration of the Board when making its decision.
- [50] The Board notes that previous decisions of the Subdivision and Development Board are not precedent setting; therefore, the Board did not place any weight on the previous Subdivision and Development Appeal Board Decision No. SDAB 2019-007.
- [51] 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 17 day of May 2023.

CHAIR:

FOIP section  
17(1)

Nayef Mahgoub

**APPENDIX "A"****DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:**

| <b>EXHIBIT NO.</b> | <b>ITEM</b>                                                                           | <b>DATE FILED</b> |
|--------------------|---------------------------------------------------------------------------------------|-------------------|
|                    | <b>Subject Area Map</b>                                                               | <b>2023-03-28</b> |
| 1.                 | Notice of Appeal                                                                      | 2023-03-24        |
| 2.                 | Appellant's Evidence Disclosure                                                       | 2023-04-25        |
| 3.                 | Respondent's Evidence Disclosure (Planner's Report)                                   | 2023-04-27        |
| 4.                 | Illustration of Interior of Existing Structure – No Ladder (submitted by Appellant)   | 2023-05-04        |
| 5.                 | Illustration of Interior of Existing Structure – With Ladder (submitted by Appellant) | 2023-05-04        |

**APPENDIX "B"****REPRESENTATIONS****PERSON APPEARING****CAPACITY**

- |    |                          |                                                                                        |
|----|--------------------------|----------------------------------------------------------------------------------------|
| 1. | Elias Biolley-Villalobos | Development Officer, Planning and Development<br>Regional Municipality of Wood Buffalo |
| 2. | Lee-Anne Kumka           | Supervisor, Development Control<br>Regional Municipality of Wood Buffalo               |
| 3. | Kris Kozak               | Appellant, Development Permit Applicant                                                |