

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: K. Howley
PANEL MEMBER: M. Kartusch
PANEL MEMBER: T. Lacoste

BETWEEN:

LARKAUN HOMES
Represented by Cory Kaun

Appellant

and

CITY OF RED DEER
Represented by Debbie Hill, Development Officer

Development Authority

DECISION:

The Red Deer Subdivision and Development Appeal Board varies the decision of the Development Officer which Refused the application for a Development Permit for a variance to an existing driveway on the Lands located at 240 Emerald Drive (Lot 10, Block 2, Plan 182 2395) zoned R1G Residential (Small Lot) District. The application is approved with the following conditions,

- I. A Development Permit shall not be deemed completed based on this approval until all conditions except those of a continuing nature, have been fulfilled to the satisfaction of the Development Officer.
- II. All Development must conform to the conditions of this Development Permit and the Approved Plans and any revisions thereto as required pursuant to this Approval. Any further revisions to the Approved Plans must be approved by the Development Authority.
- III. The Applicant shall repair or reinstate, or pay for the repair or reinstatement, to original condition, any public property owned by The City which is damaged, destroyed or otherwise harmed by development or construction on the site. Repairs shall be done to the satisfaction of

The City of Red Deer. In the event that The City undertakes the repairs the Applicant shall pay the costs incurred by The City within 30 days of being invoiced for such costs.

- IV. The Appellant shall ensure the width of the driveway apron, located on City property, is no wider than 6.70 m.

A detailed summary of the decision is provided herein.

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 (the MGA) as amended. Planning and Development is addressed in Part 17 of the MGA, and also in the *Subdivision and Development Regulation*, Alta Reg 43/2002 (the Regulation).
2. The Board is established by The City of Red Deer, By-law No. 3619/2019, *Appeal Boards Bylaw* (April 1, 2019). 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.

BACKGROUND

5. The Appellant filled an appeal to the Board on October 18, 2019.
6. The Board entered into evidence the following:

Exhibit A.1:	Hearing Materials (9 pages)
Exhibit A.2:	Appellant Submission (2 Pages)
Exhibit B.1:	Respondent (Development Authority) Report (61 pages)
Exhibit C.1:	Letter of Support (6 pages)

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Authority

7. The Development Authority stated the Appellant filed an application for a Development Permit for a variance of an existing driveway. The Driveway is located at 240 Emerald Drive, zoned R1G Residential (Small Lot) District, under the Land Use Bylaw 3357/2006 (the "LUB"). The Drive way widths in this district shall not exceed 6.10 m in width at the front property line.

8. The Development Authority stated the driveway was not constructed in accordance with the approved plan as per Development Permit DP080484, issued on July 3, 2019.
9. The Development Authority explained that at the time of the initial Development Permit Application on June 6, 2019 the Appellant submitted a site plan for a proposed driveway width of 6.71 m. The Development Officer informed the Appellant of the R1G regulation of 6.10 m maximum driveway width.
10. The Development Authority stated a revised site plan showing a tapered driveway and width of 6.10 m at the front property line was submitted by the Appellant on June 10, 2019. This resulted in the Development Permit being issued on July 3, 2019.
11. The Development Authority stated a Real Property Report (RPR) was submitted September 18, 2019 to support the issuance of a Certificate of Compliance. Upon review, of the RPR the Development Officer noted the driveway had not been constructed in accordance with the approved plans from Development Permit DP080484.
12. The Development Authority stated that the Appellant was advised of its options at that time, they would either have to apply for a variance to the driveway width or reduce the width to comply with the approved plans. On October 3, 2019 the Development Officer issued a Certificate of Compliance for the RPR with a note stating The City endorsement does not apply to the Driveway.
13. The Development Authority stated the maximum driveway width for the R1G District is in place to ensure on street parking stalls are maintained due to narrower lot frontages. As an added safety measure to pedestrians the on-street parking acts as a buffer between the sidewalks and motorists, slows traffic, and by design makes drivers aware of their surroundings.
14. In considering the Appellant's request for variance, the Development Authority considered the potential impact further constraints to on-street parking could cause. Blue, Green and Black Cart pick up is collected from the street front rather than the lane at this location. A wider driveway could result in reducing the availability of on-street parking, as well as the potential for adequate snow storage to be affected.
15. The Development Authority stated the subject area is a developing community with many lots still waiting to be developed; while it is possible to maintain sufficient parking this will depend largely on the other adjacent lots once they are completed.
16. The Development Authority's opinion is that the site is not considered unique when compared with other surrounding R1G sites, not located on a corner lot, and not an irregular shape. Therefore, the Development Authority felt a wider width driveway was not warranted in this case.
17. In conclusion, the Development Authority further stated it was the Development Officer's opinion that the Appellant was aware of the R1G driveway width regulation as shown by the revised site plan with the tapered driveway to comply with the LUB regulation.

The Appellant

18. The Appellant acknowledged that he did not have a full understanding of the Land Use Bylaw for the R1G District and did not fully understand why the driveway should be narrowed.
19. The Appellant stated that he vaguely remembered an issue with one of the driveways in the Evergreen Subdivision; however when he checked the paperwork he did not believe it was related to property at 240 Emerald Drive. At that time he made the decision to have the driveway poured in-line with the attached garage (approximately 2' over the front property line). This driveway was poured months ago, and he was only made aware of the issue when notified by the City.
20. The Appellant explained that when he looked at the driveway it did not make sense that it would be tapered; the driveway is square all the way down from the garage, similar to any driveway. From what he could tell there would be no reason for the driveway to be narrowed at the street point.
21. The Appellant stated that he takes full responsibility for his decision, maintaining in his opinion that the wider driveway does not hinder the overall look of Emerald Drive. The extra room is beneficial as it allows vehicles to safely enter / exit the driveway since Emerald Drive is slated to be one of the main arterial roads for the Evergreen Community.
22. The Appellant stated that he believes the current width of the driveway at 6.71 m still allows for adequate on street parking with room for the Blue, Green, and Black Cart pick up. He further explained there are no houses across the street therefore he did not believe there would be an issue with snow storage.
23. The Appellant stated that if the variance request is denied they would have to taper the existing driveway by jackhammering and re-pouring the cement to the specifications required. He further explained since the cement was poured months ago the concrete would be mismatched even using the same materials. As such, creating a tapered driveway at this time would be considered an eyesore for the property owner and the Evergreen Community.
24. In summation, the Appellant stated there is minor impact to the portion of the boulevard with the existing driveway. The Appellant argued that in his professional opinion even if all the neighbouring driveways were in non-compliance with the LUB there would be sufficient on-street parking available.
25. The Development Authority responded to this opinion and noted that it is difficult for anyone to know the cumulative impacts of this type of decision making. If the Appellant or other Developers are unhappy with a particular aspect of the R1G requirements they have the option to apply for an amendment to the LUB.

FINDINGS AND REASONS

26. A Detached Dwelling Unit is a permitted use in the R1G District. The Board focused its attention on the R1G regulations and the circumstances that brought this appeal forward.
27. The application for the proposed variance is for an existing driveway, upon construction the width of the driveway was poured to 6.71 m. rather than the approved 6.10 m. At the hearing the Appellant explained this was an oversight on his part.
28. The Appellant apologized for the error but indicated that nonetheless, this was a common sense decision based on safety and without knowing the R1G District regulations at the time; he could not see any reason for the driveway to be narrower than what was poured.
29. The Appellant has now familiarized himself with the R1G District regulations and the necessity for an application to vary the size requirements of the existing driveway. The Appellant believes the variance requested is reasonable with enough space for on-street parking, snow storage, and recycling.
30. The Board reviewed the report from the Development Authority stating the existing driveway was not constructed in accordance with the approved plan, and further noted the driveway was constructed to the width from the original Development Permit application of 6.71 m.
31. The Development Authority stated in its submission the driveway regulation in the R1G District is in place to ensure on street parking stalls are maintained despite the narrower lot frontages. A wider driveway than allowed by the LUB causes further constraint to the on-street parking for this side of the street and potentially causes interference with snow storage and/or the Blue, Green and Black Cart pick up.
32. The Development Authority does not consider the proposed site to be unique, irregular shape, on a corner lot or any other circumstance that would warrant the granting of a variance for this existing driveway.
33. The Board acknowledges the Appellant was made aware of the 6.10 m driveway width regulation at the time the original Development Permit Application was submitted. This was evident from the revised permit application that was submitted for approval showing the tapered driveway width in accordance to the regulations at 6.10 m.
34. The Board is cognizant that the Development Permit was approved on the basis that the Driveway would be 6.10m in width, as required by the R1G District regulations.
35. The Appellant's lack of knowledge of the R1G District regulations is not in itself sufficient reason to grant the requested variance, the revised and approved Development Permit was clear on the driveway width criteria, the Appellant had submitted that Development Permit application.

36. The Board acknowledges the Appellant was forthright in his admission of the error and that he believes if approved this variance would not impact the developing neighbourhood. There is no dispute regarding the regulations, the Appellant made an error, and is requesting a minor variance that in his opinion makes sense from a visual and safety perspective given his years of experience as a developer. The Board agrees with the Appellant and believes that jackhammering and correcting the driveway to comply with the LUB would be more severe than the minimal variance warrants.
37. The Board is mandated to uphold the relevant legislation unless there are compelling circumstances to vary it. The Board's ability to vary the regulations in the LUB are set out in s.687(3)(d)(i) of the Municipal Government Act (MGA):

(3) In determining an appeal, the subdivision and development appeal board

.....;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) 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,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

38. In considering the appeal before it, the Board agreed that, for reasons provided above, the driveway width as constructed does not comply with the LUB. As such, the Board engaged itself in the variance test under s.687(3)(d)(i).
39. The Board finds that the noncompliance of the driveway width will not unduly interfere with the amenities of the neighbourhood. Evergreen is a developing neighbourhood, the Board considered the evidence available at the hearing in noting that:
- a. The variance requested is, in total, .6m; and
 - b. The lots at either side of this Detached Dwelling are empty.
40. The Board was not presented with any other evidence specifically addressing the effect the variance would have on the amenities of the neighbourhood.

41. The Board finds that the noncompliance of the driveway width will not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board again considered the evidence presented to it. The Development Authority noted concerns in relation to safety, snow removal, and the collection of Carts.
42. The Board agrees with the Development Authority that since Evergreen is a developing neighbourhood it is very difficult to quantify the extent and validity of those concerns moving forward. The Board considered the Development Authority's concerns in the context of the current development and finds that there was insufficient evidence provided to the Board to prove that the variance, if granted, would materially interfere with or affect the use, enjoyment or value of neighbouring parcels.
43. The Board also considered the size of the variance, .6m and noted that this is minimal in the context of the immediate development. The Board does share the Development Authorities concern that the circumstances in this appeal should not be a Developer practice in an R1G District and that concerns that the Appellant or other Developers have with the R1G District regulations ought to be pursued through a request for an LUB amendment.
44. The Board considered the safety arguments raised by the Development Authority and the Appellant and given the minimal size of the variance requested, considered the safety concerns to be a neutral factor.
45. The Board accepts the Appellants submissions that if the Appellant was required to taper the driveway width he could do so. However, if that were to happen it would likely create a permanent eyesore for the homeowner and neighboring landowners as the colour of the concrete would be mismatched. The Appellant noted, and the Board accepts, that even if the exact same concrete mixture was used it would be a different colour and would be mismatched with the current driveway colour.
46. The Board also gave due consideration to the Development Authority's concern that if the variance was granted on-street parking could not be maintained as originally intended. However, given the size of the variation and in considering how it relates to the immediate development, the Board was not persuaded that on-street parking would be affected.
47. For the reasons given above, The Board finds that it should exercise its discretion under section 687(3)(d) of the MGA to vary the Development Authority's refusal for the Development Permit Application for a proposed variance to an existing driveway, located the 240 Emerald Drive.

CLOSING:

48. Based on the evidence and responses to the questions of the Board, and the reasons explained in this decision, the Board is satisfied that the concerns raised by the Development Authority can be effectively addressed with the use of conditions placed on the permit. For these reasons, the decision of the Development Authority is varied, and the application is approved with conditions stated above.

Dated at the City of Red Deer, in the Province of Alberta, this 27 day of November and signed by the Chair on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



On behalf of:
K. Howley, Chair
Subdivision & Development Appeal Board

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal, 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** after the issue of this decision.

APPENDIX A

- Exhibit A.1: Hearing Materials (9 pages)
- Exhibit A. 2: Appellant Submission (2 Pages)
- Exhibit B.1: Respondent (Development Authority) Report (61 pages)
- Exhibit C.1: Letter of Support (6 pages)