

**SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION**

CHAIR: V. HIGHAM  
PANEL MEMBER: G. MARKS  
PANEL MEMBER: L. MULDER

---

BETWEEN:

ROBIN & VERA KRAUSE

Appellant

and

LAEBON DEVELOPMENTS LTD.

Applicant

and

CITY OF RED DEER  
Inspections & Licensing Department

Development Authority

---

This is the Decision of an Appeal to the Red Deer Subdivision and Development Appeal Board in regards to the December 20, 2016 decision of the Development Officer, which approved an application by Laebon Developments Ltd. for the Permitted Use of a Detached Dwelling, with variances. The subject property is 49 Talisman Close, located on lands zoned R1 and legally described as UNT 39, CDE, Plan 1323862, in Red Deer, Alberta.

The Appeal hearing took place on January 24, 2017 in The City of Red Deer Council Chambers in the City of Red Deer, within the Province of Alberta.

**Hearing Attendees:**

Development Authority: Beth McLachlan, Development Officer, City of Red Deer  
Erin Stuart, Inspections & Licensing Manager, City of Red Deer

Applicant: Steve Bontje, Laebon Developments Ltd.  
Yvonne Spady, Laebon Developments Ltd.

Appellant: Robin Krause  
Vera Krause

**DECISION:**

For the reasons noted herein, the Red Deer Subdivision and Development Appeal Board allows the Appeal and revokes the subject Development Permit DP076510.

## **JURISDICTION AND ROLE OF THE BOARD**

1. The legislation governing municipalities in the Province of Alberta is the *Municipal Government Act*, RSA 2000, c M-26 [MGA]. Planning and Development is addressed in Part 17 of the MGA, and further in the *Subdivision and Development Regulation*, Alta Reg 43/2002 ["SDR"].
2. The Board is established by City of Red Deer, Bylaw No. 3487/2012, *The Appeal Boards Bylaw*. The duty and purpose of the Red Deer Subdivision and Development Appeal Board ("SDAB" or "the Board") is to hear and make decisions on appeals for which it is responsible under the MGA and City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw*.

## **BACKGROUND**

3. The property under appeal is located at 49 Talisman Close, on a bare land condominium site in the Timbers area, within the Timberstone Park neighbourhood. The subject property, zoned R1, is adjacent to other Detached Dwelling sites, and backs onto a Municipal Reserve (MR).
4. On December 20, 2016, the Development Officer approved the application from Laebon Developments Ltd. for a development permit for the Permitted Use of a Detached Dwelling, with 3.84 m rear yard to the deck, 290.56 m<sup>2</sup> site coverage, and 190.44 m<sup>2</sup> of landscaping, subject to conditions.
5. On December 30, 2016, Robin and Vera Krause filed an appeal to the Subdivision and Development Board in regards to the development permit approved by the Development Authority. The Appellants own 53 Talisman Close, immediately adjacent to the subject property.

## **PROCEDURAL OR JURISDICTIONAL MATTERS**

6. None of the parties objected to the composition of the Board as introduced at the hearing.
7. No Party raised any preliminary matters or concerns.
8. The Chair entered the following Exhibits into the record:
  - Exhibit A - Hearing Materials submitted by Board Clerk, 7 pages.
  - Exhibit B - Development Authority Submission, 26 pages.
  - Exhibit B2 - Development Authority, Supplemental Submission, 1 page (submitted during hearing).
  - Exhibit C - Applicant Submission, 7 pages.
  - Exhibit D - Appellant Submission, 6 pages.

## ISSUES

9. The Appellants' raised the following sole issue for the Board's consideration:
- a) The proposed subject development would "materially interfere with or affect the use, enjoyment or value of" their own property, because the subject variances sought and approved by the Development Authority are too large to be reasonably acceptable.

## POSITION of the PARTIES

### Development Authority Position:

10. The Development Authority, represented by Beth McLachlan and Erin Stuart, spoke to Exhibit B, and confirmed that this Appeal pertains to the application and subsequent approval of Development Permit DP076510.
11. The Development Authority confirmed that the subject application was considered and approved on December 20, 2016. The application was approved with the following variances:
- a) 0.66 m variance to the minimum rear yard setback (s. 4.1.2 of the *LUB*).
  - b) 4.78 m<sup>2</sup> variance to the minimum landscaped area (s. 4.1.2 of the *LUB*).
  - c) 67.46 m<sup>2</sup> variance to the maximum site coverage (s. 4.1.2 of the *LUB*).
12. The Development Authority further confirmed the following:
- a) The proposed development is an acceptable design, compatible with the existing surrounding developments.
  - b) As per the *LUB* requirements and department policy, there was no consultation on this application; however, the approval was advertised in the newspaper on December 23, 2016.
13. The Development Authority submitted that similar variances are common and the proposed development with variances would not unduly interfere with the amenities of the neighbourhood or materially affect the use and enjoyment of neighbouring parcels for the following reasons:
- a) The Detached Dwelling backs onto a large MR parcel, and the subject variances are similar to other rear yard variances previously approved on Talisman Close.
  - b) No individual property owner has an unlimited right to a view of the MR, and any potential impact to adjacent properties must be balanced against the rights of the Applicant to develop the property in a fair and reasonable manner.
  - c) The requested variance to the landscaped area is considered to have minimal impact to the area, as the MR parcel provides visual enhancement.
  - d) The site coverage variance is largely due to the rear deck being covered, which increases the site coverage calculation made in accordance with the *LUB* as follows:
    - i. Without the deck cover, the subject's site coverage is 44% (similar to other approved variances on Talisman Close (as shown on B2));
    - ii. With the deck cover, the subject's site coverage increases to 52.1%.

14. The Development Authority clarified that a covered deck is not considered the same as an enclosed deck with sides closed in. A covered deck must meet the same requirements as any deck, covered or not, in terms of rear setbacks. The proposed covered deck affects the calculation of site coverage under the *LUB*, which increases the variance required for this development standard. The Development Authority identified this as the main issue before the Board in the subject Appeal.
15. In summary, the Development Authority asked the Board to deny the Appeal and uphold the Development Permit with or without conditions.

**Applicant Position:**

16. The Applicant, represented by Steve Bontje and Yvonne Spady of Laebon Developments Ltd., spoke to Exhibit C which includes information on sun path modelling, landscaping design, and community design.
17. Mr. Bontje referred to sun path models and submitted that there is minimal impact to the Appellant's adjacent property in the winter months, and no issue in the summer months when the sun is higher in the sky.
18. Mr. Bontje explained that the types of homes under development in the Timbers area reflect the current market where developers endeavour to accommodate the requests of home buyers. The home proposed for the subject site is a good design and fit for the surrounding area, even though some variances were sought. He further noted that similar variances are common in the area, and on the subject street particularly.
19. Mr. Bontje further explained that the type of home development proposed for the subject site is designed to meet the needs of a specific purchaser within R1 land use zoning. The developer works with the homeowner to create a design that responds to their needs while causing as minimal impact as possible to adjacent owners. The developer then submits the design to the Development Officer, with requested variances noted.
20. In summary, the Applicant submitted that the variances sought for the subject site are reasonable, and have been considered and approved by the Development Authority. The Applicant asked the Board uphold the Development Permit approval.

**Appellants' Position:**

21. The Appellants, Robin and Vera Krause, spoke to Exhibit D containing their written submission, landscape plan, and photos demonstrating the potential visual impact of the proposed subject house design with a covered deck.
22. Mrs. Krause expressed concern that even though they had researched the area and City Bylaws prior to purchasing and developing their property, they would not have purchased their property had they known the extent of development that could and has been approved on the subject site - immediately adjacent to their property at 53 Talisman Close.

23. Mrs. Krause explained that they relied on the *LUB* to inform citizens respecting the type of development that might be allowed in various areas in the city. She acknowledged that minor variances are commonly approved, but argued that the site coverage variance sought in the subject Appeal is significant, and negatively impacts the enjoyment of their home.
24. In their written submission, the Appellants noted that their own development on Talisman Close required a small variance, for which they circulated plans to neighbouring home owners in College Park. Mrs. Krause stated they were not consulted respecting the Development Authority's approval of the subject Development Permit. Had they not seen the approval in the newspaper, they would have had no knowledge of the approved subject Development Permit respecting the lot immediately next door to their own.
25. Mrs. Krause further explained that upon discovering the proposed development in the newspaper, she contacted Laebon Developments Ltd. and expressed concerns on behalf of herself and Mr. Krause. She informed the developer that their main concern was the deck cover, and advised that they would withdraw the Appeal if the deck cover could be removed from the design.
26. Mrs. Krause submitted that the proposed covered deck on the subject site is considerably more intrusive than other decks along Talisman Close because other decks on the street are not as overpowering. The proposed covered deck represents a significant variance from the *LUB* requirements, which impacts their property far beyond any reasonable expectation based on their review and reliance on the requirements of the City's *LUB* Bylaws.
27. In summary, the Appellants asked the Board to allow the Appeal and overturn the approved subject Development Permit.

#### **BOARD FINDINGS and REASONS FOR DECISION**

28. The Board accepts the Appellants' argument that the site coverage variance approved for the subject property is unreasonably large relative to the maximum development standards outlined in the *LUB*.
29. The Board reviewed s. 687(3)(d) of the *MGA*, referenced by the Development Authority and the Appellants in their submissions, which reads as follows:

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,

30. The Board finds that the tests identified in sub-sections (A) and (B) above need not be addressed in the subject Appeal, since the Board is not seeking to confirm issuance of the subject Development Permit, but has ruled to revoke the Permit on separate grounds.
31. The Board is revoking the Permit for reasons related to the fair and equitable application of development standards outlined in the *LUB*, as detailed below.

**Site Coverage:**

32. Based on the Appellants' oral and written submissions, the Board concludes that the Appellants' main issue in this Appeal relates to the approved subject site coverage of 52.1%, which represents a 30% variance from the maximum site coverage of 40% allowed under Part Four, s. 4.1.2. of the *LUB*.
33. The Board heard that of the six homes currently completed on Talisman Close, all six sought and were granted variances for either rear yard, deck, or site coverage (noted in Exhibit B2). The two other properties on the subject street granted *site coverage* variances (41 and 45 Talisman Close) reflect site coverages of 41.2% and 42.9% respectively, both approved by the Development Officer.
34. The Board accepts that if the proposed deck were not covered by the building's roof line, the subject site coverage would be reduced to 44% (agreed to by all parties). This would still exceed the maximum site coverage allowed under the *LUB* by a variance of 10%, but would be more equitable relative to previous site coverage variances granted on the subject street, and would have been acceptable to the Appellants, by their own admission.

**Development Guidelines:**

35. Upon questioning by the Board, the Development Authority stated that there are presently no definitive parameters to guide a development officer in determining when a variance is significant enough to refer to the City's Municipal Planning Commission (MPC). A referral to the MPC requires that affected property owners within a stipulated radius of the proposed development be notified of the application, enabling these parties to present their issues or concerns *prior* to the approval of a development permit.
36. The Development Authority noted that in the past, a proposed variance greater than 10% triggered an automatic referral to the MPC for development permit approval, but noted that this policy no longer exists.
37. The Board is of the opinion that reasonable policy guidelines respecting referral of *LUB* variances to the MPC would be warranted in a case such as the subject Appeal, for the promotion of fair and equitable planning protocol throughout the city, and to give affected parties the opportunity to be notified and to raise potential concerns prior to a costly appeal to the SDAB.

**Reasonable Reliance on the LUB:**

38. The Appellants raised a very compelling argument by noting that they researched and *relied upon* the guidelines set forth in the *LUB* prior to purchasing and developing their property. Upon questioning by the Board, Mrs. Krause replied that if the proposed subject development were built first, with the variances approved in the current Development Permit, they are "100% certain they would not have purchased" their present lot.
39. Mrs. Krause also raised what the Board considers to be a pivotal issue in this Appeal by stating: "I know we don't have an inherent right to a view. But I believe the bylaws give us a right to a certain sense of *what to expect*."
40. The Board agrees with this conclusion that citizens should be able to rely on the development standards identified in the *LUB* with a reasonable sense of clarity and certainty. They should have a reasonable sense of "what to expect."
41. For this reason, the Board finds the site coverage variance approved by the Development Officer in this Appeal to be excessive, being 30% larger than the maximum 40% site coverage allowed under the *LUB* – which speaks to the principle of *fairness*, allowing citizens to reasonably rely on the *LUB* development standards.
42. Further, this variance is considerably larger than the two previous site coverage variances approved on the subject street (26% and 21% larger respectively) – which speaks to the principle of *equity*, allowing citizens to expect similar treatment in similar circumstances. The Appellants were prepared to accept a site coverage variance *similar* to those previously approved on their street, but are not prepared to accept the variance approved in the subject Development Permit.

**CONCLUSION**

43. Thus, for reasons noted herein, the Board allows the Appeal, overturns the decision of the Development Officer, and revokes the Development Permit DP076510.

**DATED** at The City of Red Deer, in the Province of Alberta, this 2<sup>nd</sup> day of February, 2017.



---

**Vesna Higham, Chair**  
**Red Deer Subdivision and 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** of this decision.*

---

**APPENDIX A**

Documents presented at the Hearing and considered by the Board.

---

**EXHIBIT LIST**

- Exhibit A      Hearing Materials submitted by Board Clerk, 7 pages.
- Exhibit B      Development Authority Submission, 26 pages.
- Exhibit B2     Development Authority Supplemental Submission, 1 page (submitted during hearing).
- Exhibit C      Applicant Submission, 7 pages.
- Exhibit D      Appellant Submission, 6 pages.