

Appeal No.: SDAB 0262 001 2025

Hearing Dates: January 21, 2025

February 18, 2025

SUBDIVISION AND DEVELOPMENT APPEAL BOARD DECISION

PRESIDING OFFICER: T. HEGER

PANEL MEMBER: M. KARTUSCH

PANEL MEMBER: D. WIELINGA

BETWEEN:

KYLEE STEVENS

Appellant

and

CITY OF RED DEER

Represented by Debbie Hill, Senior Development Officer and Marilee Murgatroyd, Associate City Solicitor

Development Authority

DECISION:

The Subdivision and Development Appeal Board overturns the Decision of the Municipal Planning Commission and grants Approval of the Appellant's application for a Development Permit of a Discretionary Use of a new two-bedroom Backyard Suite above a new detached garage with a developed floor area of 145 m² shown on the plans presented to SDAB on February 18, 2025, and stamped as "Approved", copies of which form part of this approval (collectively referred to as the "Approved Plans"), on the lands zoned R-L, located at 4309 45A Avenue, legally described as Lot 3, Block M, Plan 1528 HW, (the "Site").

The application is Approved with the following conditions:

1. 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.
2. 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 revisions to the Approved Plans must be approved by the Development Authority.
3. The Applicant shall repair or reinstate, or pay for the repair or reinstatement, to original condition, any public property, street furniture, curbing, boulevard landscaping and tree

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planting or any other 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.

4. The Applicant shall ensure that the approved parking is available for the exclusive and unrestricted use of the occupant(s) of the Backyard Suite.
5. The Applicant shall ensure that the exterior of the principal dwelling is finished in a manner that is similar to or complements the exterior of Backyard Suite to the satisfaction of the Development Officer. This must be completed prior to occupancy of the Backyard Suite.

A detailed summary of the decision follows.

JURISDICTION AND ROLE OF THE BOARD

1. The Board is established by The City of Red Deer, Bylaw No. 3680/2022, *Red Deer Tribunals Bylaw*, April 11, 2022. The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible.
2. The Subdivision and Development Appeal Board is a subdivision and development appeal board as required by the *Municipal Government Act*, RSA 2000, c. M-26 ("MGA") and its authority is set out in the MGA, regulations established pursuant to the MGA, the Red Deer Tribunals Bylaw, and the City's Land Use/Zoning Bylaw (Bylaw No. 3357/2024) ("ZB").
3. None of the parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
4. The hearing was opened on January 21, 2025 and adjourned by mutual consent to February 18, 2025.
5. There were no preliminary issues for the Board to decide.

BACKGROUND

6. On October 10, 2024, the Applicant filed an application for a Development Permit to construct a two-bedroom Backyard Suite above a new detached garage. The application included a variance request to exceed the maximum allowable floor area by 115 m² (383%) for a total floor area of 145 m².
7. Backyard Suites are a Discretionary Use in the R-L Zone and are subject to the Backyard suite regulations set out in Sections 4.50 and 6.10 of the ZB. The Proposed Site is also subject to the Developed Area regulations set out in Section 3.190 and the Parkvale Overlay, Section 12.20 of the ZB.

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8. On December 11, 2024, the Municipal Planning Commission ("MPC") considered the Development Permit. The MPC refused the Development Permit application for the following reasons:
 - i. The development is not compatible with existing development in the area contrary to the Parkvale Overlay, including but not limited to Part 12.20.1 of the Zoning Bylaw.
 - ii. The proposed variance is excessive and contrary to the intent of the Zoning Bylaw with respect to the principle of ensuring balance between the size of the primary dwelling unit and a Backyard Suite.
 - iii. The use is not compatible with the existing development and would materially interfere with the use and enjoyment of neighbouring parcels of land, due to its size and height.
9. The refusal from MPC is dated December 11, 2024 with notice publicly advertised December 18, 2024. Notice to appeal was received on January 8, 2025 which satisfies the requirements of Section 686 of the MGA.
10. The Board entered into evidence the documents found in Appendix A.

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Authority

11. The Development Authority began their presentation by reviewing the relevant legislation and ZB requirements for a Backyard Suite at the proposed property and specifically discussed Sections 4.50 and 6.10 of the ZB noting that the proposed development meets the regulations of those sections. Of note, the Development Authority noted that the proposed development is on a Side or Rear Yard (s.4.50.7.1), it is to be constructed on a permanent or temporary foundation (s.4.50.7.2), and it may only be on a Corner Site or a Site with a lane (s.4.50.9.1).
12. The Development Authority also provided the following table on page 4 of Exhibit C.1 highlighting where the proposed Development meets the requirements of the ZB or where a variance is being sought:

The Proposed Development and ZB regulations

ZB Requirement	Regulation	Proposed	Analysis
Zoning	R-L	Discretionary Use	Met
Site Area	Minimum 360 m ²	533.98 m ²	Met
Site Coverage	Max 60% Site Coverage including dwelling and Backyard Suite 60% is 320.38 m ²	120.4 m ² (22.5% site coverage) including existing dwelling and proposed Backyard Suite	Met
Side Yard Setback	1.5 m	1.524 m (both side yards)	Met
Rear Yard Setback	0.9 m	0.9 m	Met
Maximum Height	2 storeys with an overall maximum of 10.0 m from Grade	9.95 m	Met
Separation distance to primary dwelling unit	Minimum 2.5 m	13.66 m	Met
Floor Area	75% of the Building Footprint of the principal Dwelling Unit. 75% is 30 m ² (323 ft ²)	145. m ² (1561 ft ²)	Not Met Variance of 115 m ² (383 %) being sought
Maximum of 15% of Houses in a neighbourhood may have either a Backyard Suite or House Suite	15% of neighbourhood is 26 Suites	Including this proposal the neighbourhood would be at 12.5% (21 Suites)	Met

13. The Development Authority explained that the Maximum Floor Area of a Backyard Suite is 75% of the Building Footprint of the principle dwelling as prescribed in Section 4.5.10 of the ZB. The principle dwelling footprint is 40 m² (430 ft²) which limits the Backyard Suite to 30 m² (323 ft²). The proposed developed floor area is 145 m² which does not comply with the ZB and requires a variance.
14. The Development Authority submits that while a variance of 115 m² (383%) could be considered excessive, magnitude is not always determinative of impact. The magnitude of a variance is not a factor listed in the variance test.
15. The Development Authority further submits that a larger developed floor area for the Backyard suite ensures livability of the unit and supports modern lifestyle needs and amenities. The Development Authority also noted that the Municipal Development Plan ("MDP") encourages re-investment and infill

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in older neighbourhoods, a mix of housing types and the efficient utilization of land which this proposal achieves.

16. The Development Authority stated that a Backyard Suite is allowed by the ZB as a Discretionary Use on the site and explicitly noted that Administration supports the proposed use.
17. The Development Authority also raised the argument of whether the impact from this development would be undue or excessive in terms of sunlight, views and privacy.
18. The Development Authority also argued that since the term storey is not defined in the ZB, the Board should instead look to the maximum allowable height of 10 m. Through questioning, the Development Authority made the case that throughout the ZB, a one-storey building has a maximum height of 5 m, a two-storey building has a maximum height of 10 m, and a three-storey building has a maximum height of 15 m. As a result, in the Development Authority's opinion, this building, at a height of 9.95 m should be deemed to satisfy the requirement of a two-storey building. Through further questioning, the Development Authority did not confirm whether the proposed development has two-storeys or three-storeys.
19. The Development Authority concluded its presentation by reviewing s. 687(3) of the MGA which lays out the variance test for an SDAB. Specifically, portions of s. 687(3) state:

687(3) In determining an appeal, the board hearing the appeal ...

 - (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
 - ...
 - (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
 - (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.
20. It was the Development Authority's position that based on the variance test, the proposed development should be approved with the conditions provided in Exhibit H of Exhibit C.1.

The Appellant

21. The Appellant confirmed that she is the Applicant for the Development Permit which is the subject of this appeal.

22. The Appellant's comments were brief and largely in agreement with the Development Authority's presentation and arguments.
23. The Appellant stated that she believes the proposed development aligns with the intent of the ZB, respects the character of the surrounding neighbourhood, and ensures compatibility with the existing properties.
24. The Appellant's submissions then went on to respond to the reasons for refusal of the MPC (referenced below) as follows:
- i. **The development is not compatible with existing development in the area contrary to the Parkvale Overlay, including but not limited to Part 12.20.1 of the Zoning Bylaw.**

In response, the Appellant noted that properties across 45A Avenue feature detached garages consistent with the design of an accessory building, like the proposed development. She also noted that this property faces Barrett Park minimizing the number of neighbouring homes which allows for the suite to enjoy its own views while minimizing the impact of the views and privacy of surrounding properties. She also discussed Immediate Street Context (part of the Parkvale Overlay Regulations (s.12.20.1 of the ZB)) and argued that this is compatible with the street given the garages on the other side of 45A Avenue.

- ii. **The proposed variance is excessive and contrary to the intent of the Zoning Bylaw with respect to the principle of ensuring balance between the size of the primary dwelling unit and a Backyard Suite.**

The Appellant submitted that the use of the primary building footprint to determine the total floor area of the Backyard Suite is unreasonable in this context since a 30 m² (323 ft²) suite is not a functional, liveable space especially in the context of Red Deer's climate. Further, while there needs to be an appropriate balance between the primary dwelling and the Backyard Suite, the depth of this parcel should weigh in favour of a variance since it is a fairly deep parcel in relation to its street frontage. Additionally, the proposed development includes additional parking for both the suite and the primary dwelling, mitigating concerns about additional parking on 45A Avenue.

- iii. **The use is not compatible with the existing development and would materially interfere with the use and enjoyment of neighbouring parcels of land, due to its size and height.**

The Appellant submitted that the height of the proposed development meets the requirements of the ZB for a Backyard Suite. She went on to argue that the proposed location at the rear of the lot is more in line with other parking areas/garages of the neighbouring parcels leading to less impact on views than from dwelling units. She noted that the way the windows are placed and designed on the proposed development, privacy will be maintained for adjacent properties with no overlook from the suite. Lastly, in response to the third reason for refusal from MPC, the Appellant noted that no properties will have their direct views impacted. Further, if the main dwelling unit were to be

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demolished, a new house of significantly larger size and site coverage could be built as a Permitted use. This proposal balances the existing character of the area with a liveable space.

25. The Appellant concluded her presentation by acknowledging that carriage houses are relatively new to Red Deer and that older homes, like the current house on the subject property, would require special consideration given their generally smaller footprint in relation to newer homes. She noted that the design of the proposed development was carefully undertaken to take advantage of the proximity and views of the adjacent park while minimizing impact on neighbouring properties. Further, the design was kept intentionally simple and similar to the existing home on the site to achieve a blend between a newer, Backyard Suite and an older, 1940's era home. Further, the only request variance is to the Maximum Floor Area considering the smaller footprint of the original house on the site.
26. In response to questioning from the Board, the Appellant provided the following additional comments/responses:
- i. This property was purchased in summer 2024 particularly because of its deeper dimensions being able to accommodate a carriage house. The Appellant stated that she had contacted the City to discuss the potential of a Backyard Suite/carriage house on this site when doing her due diligence of its purchase.
 - ii. The reason why this appeal is underway is due to the small footprint of the primary dwelling unit on the site. If it were a more typical size/layout, the proposed development would not have required a variance from what's in the ZB.
27. Whitney Robinson, a colleague of the Appellant, spoke in favour of the appeal noting that the maximum height of a storey is not defined and depending on the layout and height of a storey, a building could have two storeys with high ceilings in the same envelope as a three-storey building with standard height ceilings. In response to a question from the Board, Ms. Robinson stated that the proposed development could typically be considered a three-storey building.

Affected Persons in favour of the appeal

28. Carlos Settle, owner of a nearby property, spoke in favour of the appeal stating that Parkvale is in need of new investment and development. The house at the subject site is old, small, and more than likely should be demolished to allow for a newer home to attract younger families to the area. Mr. Settle stated that he has several rental properties around Red Deer and finds his property in Parkvale to be difficult to rent out and keep tenants long term. He went on to talk about how Calgary and Edmonton have some of their best communities around the rivers in those cities while Parkvale is struggling in Red Deer.

Affected Persons opposed to the appeal

29. Dawna Allard, neighbouring property owner, submitted a letter to the Board, in addition to her submissions to MPC, which was entered as Exhibit D.1, and spoke in opposition to the appeal. Mrs. Allard spoke about her history with the area noting that she has lived there since 2007 and completely renovated her property when she moved in. Her submissions included a discussion of the proposed

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development and that the requested variance at 383% is unreasonable, two homes are not allowed on a site, and that if constructed, this building will tower over her one-storey home affecting the sunlight at her property. To conclude, Mrs. Allard stated that she wants to see reasonable development which, she argued, does not encompass the current proposal.

30. Bath-Sheba Van Den Berg, Vice-President of the Parkvale Community Association and area resident, spoke against the appeal. Her comments included that the proposed development is a three-storey carriage house, two houses or principal dwellings are not allowed on the same site, there is an over-density in Parkvale already when considering the legal and illegal secondary suites, parking regulations do not permit three parking stalls on one property, and this will have an impact on the enjoyment of the area since it is adjacent to a large park. Ms. Van Den Berg also wrote a letter to MPC on behalf of the Parkvale Community Association which was included in the MPC report found within Exhibit C.1.
31. Helen Craig, Treasurer of the Parkvale Community Association and area resident spoke against the appeal in addition to her written submissions included as part of the MPC report included in Exhibit C.1. Ms. Craig stated that she chose Parkvale in part due to the Overlay which ensures some consistency and continuity in the community. She stated that it's not hard to comply with the Overlay and to ensure that development enhances the community and character of the neighbourhood. She discussed that development is underway with additions and legal secondary suites being built and that there are new families moving into Parkvale. Ms. Craig stated that there are infrastructure issues already in the area and that when counting the 20 legal secondary suites, and the 19 illegal/non-compliant secondary suites, the area is over the limit prescribed in the ZB.
32. Len Carlson, President of the Parkvale Community Association and nearby resident, spoke against the appeal. Mr. Carlson's presentation began with an overview of the six homes on 45A Avenue. Specifically, it was stated that of those homes, 1 has a legal secondary suite, 1 is being used as a short-term rental (AirBnB), and 2 homes have unregistered secondary suites. He went on to argue that the proposed development will have the appearance of a second home and has an overwhelming design that is not coherent with the community.
33. Joanne Courtice, a nearby resident, spoke against the appeal in addition to her letter included as part of the MPC report in Exhibit C.1. Ms. Courtice stated that her back lane becomes 45A Avenue so she is well aware of the area. She raised concerns about the traffic in the area and how it could impact the four senior communities in Parkvale. She raised concerns about the design of the proposed development and how it would impact the character of the neighbourhood specifically stating that this is a three-storey rectangle which looks like a large box. She stated that she is not opposed to development but that it may comply with the ZB and Parkvale Overlay Regulations. She also raised concerns about the neighbours and the impact this development would have on the use of their property including their back patio which faces the adjacent park. She also commented that the north and south elevations have very little definition or interest on them.
34. Alexandra Dopudj, nearby resident who recently moved into Parkvale, spoke against the appeal. Ms. Dopudj raised concerns about the precedent setting nature of an approval of this proposal. She explained that 600 ft² is not unreasonable for a dwelling size when considering different designs around the world. She also raised concerns about the proposal being three-storeys and that the requirement of the ZB is a maximum of two-storeys. She suggested that the neighbourhood should be left as is and

that this proposal be rejected.

35. Gord Robertson, nearby resident, spoke against the appeal in addition to his letter included as part of the MPC report in Exhibit C.1. He stated that since he first purchased his property in 1961, he was always held to the letter of the ZB at the time and was never given a variance. When he tried to build a garage that was slightly outside the limit, the application was rejected. When he wanted to impinge on an easement, it was rejected. He asked that the proposal be held to the same standard.
36. The Board also received written submissions from Doug and Annette Jensen, nearby residents, in opposition to the proposal. Their comments focused on concerns about the magnitude of the variance being requested and concerns about the design causing disruption to the neighbourhood. They also raised the point that the Zoning Bylaw is in place to prevent the development of unapproved projects and asked that the city enforce the bylaws.
37. The Board also received a written submission from Janet Cole, nearby resident, in opposition to the appeal. Ms. Cole raised the issue of the proposed development being too large for Parkvale, that it is outside the bylaw limits and standards for the community, and that the proposal is more appropriate in a neighbourhood with larger houses or even acreages, but not in Parkvale. She closed her submissions asking the Board to say no to this proposal.
38. The Board also reviewed the other written submissions contained within the MPC report and took the comments of those within the immediate area under advisement. To summarize the letters received by the MPC, a summary page was provided on page 73 of Exhibit C.1 which highlighted the issues raised by the letters. The most common concerns centered around the size of the building, that it is not in keeping with the Parkvale aesthetic, and impacts caused by constructing a tall building in this location.

REBUTTAL

The Development Authority

39. In response to public comments about the proposed development, the Development Authority provided the following response:
 - i. With regard to concerns about over-density, the Development Authority referenced para. 21 of Exhibit C.1 and noted that they are only able to count suites with approvals. Any suites that are unapproved for which the City receives a complaint, are investigated and either brought into compliance or ordered removed.
 - ii. Short term rentals are not currently regulated in the city so concerns about AirBnB, Vrbo and other similar companies is outside the purview of the ZB.
 - iii. The top floor of the proposed development is a functional attic space and fits under the maximum height limit of Backyard Suites in the ZB.
 - iv. Responding to concerns about this being a precedent setting decision, each site is reviewed and considered on an individual basis by the Development Authority.

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40. To summarize its position, the Development Authority noted that this is an appropriate proposal for this site and a variance is reasonable given the circumstances. Further, this proposal provides eyes on the park which can help with the security of the area, and retains the original 1940s era house. The Development Authority went on to note that the user is not a planning consideration. However, planning processes and guidelines allow for the orderly and economical use of land while striking a balance between the developers desires to improve the property with the use and enjoyment of the neighbouring parcels. As patterns change, the variance process allows for the gradual change of things like the ZB to enable an efficient use of the land within the city.

The Appellant

41. The Appellant offered no further comments for rebuttal.

FINDINGS AND REASONS

42. The Board's jurisdiction to hear this appeal is set out in section 687(3) of the MGA.

687(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

- (a) repealed 2020 c39 s10(52);
 - (a.1) must comply with any applicable land use policies;
 - (a.2) subject to section 638, must comply with any applicable statutory plans;
 - (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
 - (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
- (b) must have regard to but is not bound by the subdivision and development regulations;
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (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.

43. The Board must determine whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to those making submissions to the Board; however, the Board wishes to review this issue for completeness.

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44. The Appellant is the Applicant for the Development Permit and is therefore affected. The Appellant has the right of appeal under section 685(1).
45. The person who spoke in favor of the Appeal was a nearby Property Owner which is in 100 meters of the Lands.
46. Those who spoke in opposition to the Appeal were nearby residents which is within 100 metres of the Lands and some are members of the Parkvale Community Association.
47. Due to the proximity to the Lands, the Board finds that all persons that spoke in favor and opposed to the Appeal are affected.
48. The Board reviewed the submissions received both in writing and orally at the merit hearing.
49. The Board then considered the proposed development and whether it conforms with relevant statutory plans and the ZB. The Board first finds that a Backyard Suite is allowed as a Discretionary Use in the R-L Zone. The Board also finds that the proposal is a dwelling unit and meets the definition of a Backyard Suite as defined in s.4.50 of the ZB. When considering the land use definition of the R-L zone, the Board finds that this zone is primarily for low density dwellings to which, the proposed development conforms. The Board also finds that a dwelling unit like the proposed development is compatible in use with adjacent uses, namely, other dwelling units and the adjacent park.
50. The Board then considered the development criteria that is met by the current proposal and finds that minimum lot size, overall height, setbacks, amenity space, off-street parking, and site coverage are all met as per the requirements of the ZB.
51. The proposed Development includes developed floor area within the roof (directly under the roof) which the Development Authority considers a loft.
52. In response to questions from the Board to both the Development Authority and the Appellant, the Board determined that it was necessary to decide if the proposed development was a two-storey building or a three-storey building despite the overall height being 9.95 m. While the Development Authority noted that storey is not defined in the ZB, the Board relied on the long-standing legal principle that when a term is not defined in an enactment, the ordinary definition of that word in context should be used¹. The Board also considered the definition of storey in the Oxford English Dictionary (oed.com) which defines a storey as “each of the sections of a building comprising all the rooms that are on the same level.” In this case, the Board determined that each level (the garage/parking level, the upper floor, and the loft floor) comprised a storey resulting in a final count of three storeys for the proposed development. The Board finds that the ZB states that a Backyard Suite has a Maximum Height of “2 storeys with a maximum of 10.0 m from Grade”.
53. Given the above the Board identified the following issues,
 - i. The Development does not conform to the Maximum number of storeys for a Backyard Suite.

¹ *Landry v Rocky View County (Subdivision and Development Appeal Board)*, 2025 ABCA 34 at para. 22

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- ii. The Development does not conform to the Maximum Floor Area of 115m².
54. The Board considered the reasons for refusal of the MPC in the context of the variance test set out in section 687(3)(d) of the MGA and the regulations of the ZB. In order to grant a variance, the Board must find that the variance test in Section 687(3)(d) is met.
55. Section 687(3)(d)(i)(A) requires that the Board find the proposed development will not unduly interfere with the amenities of the neighbourhood. The Board finds that the proposed development satisfies most of the requirements laid out in the ZB without need for a variance. Due to the unique situation of this property, the Board is cognizant that the small footprint of the existing home drastically limits the floor area of a potential Backyard Suite. Given the location of the proposed development on the edge of the community, facing a back lane and the adjacent park, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood. Further, the Board finds that the proposed development is not drastically out of place given the mix of build forms and property layouts among the other properties on 45A Avenue.
56. Section 687(3)(d)(i)(B) requires the Board to find that the proposed development will not materially affect the use, enjoyment, or value of neighbouring parcels. While the Board is aware that all development is likely to cause at least some amount of impact, the Board finds that the proposed development, located entirely within the required setbacks of the subject site and against the adjacent park, will not have a material impact on the neighbouring properties. In oral submissions from affected persons, several people raised concerns around shadowing and the view. The Board also heard and was reminded of the escarpment to the east of the adjacent park resulting in a significant change in elevation to the east of the park. As a result, the Board finds that the impact to shadowing is mitigated by the presence of, and shadowing already caused by, the escarpment. Regarding the view, the Board reviewed the photos submitted by the Appellant from the lane and finds that while there will be some impact on view, it is within a reasonable balance of the Appellant's right to develop her property and the impact on the views of the neighbouring properties.
57. Section 687(3)(d)(ii) requires the Board to find that proposed development conforms with the use prescribed for that land or building in the Land Use Bylaw. The Board finds that a Backyard Suite is a Discretionary Use in the subject site's R-L district and finds that the proposed development conforms with the uses found in s.6.10 of the ZB.
58. Considering the above findings of the Section 687(3)(d) variance test, the Board then considered the specific variances being requested. With regard to the proposed development having three-storeys, the Board considered that the Maximum Height of 10 m is satisfied. The Board also considered that even without development on the loft floor, essentially turning it to a two-storey building, the Backyard Suite could still be built without changing the building envelope or overall height. The Board also considered the comments of Ms. Robinson who noted that the same 10 m tall building could have two storeys with very high ceilings or three storeys with standard height ceilings. The Board finds that a variance to allow for the loft level is appropriate in the circumstances and grants the same.
59. The second variance is in regard to the Maximum Floor Area. After reviewing Section 687 of the MGA, the Board finds that magnitude of a variance is not itself a determining factor. The Board then considered whether the proposed development violates the intent of the ratio laid out in the ZB where

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a Backyard Suite is limited to a Maximum Floor Area of 75% of the building footprint of the main dwelling. As discussed earlier, the Board finds that the 1940's era home is not typical in the market today and has not been a typical house size for several decades. As a result, the Board finds that the requirement in s.4.50.10 of the ZB is not reasonable and does not meet the intent of Council in the present case. Further, when considering the MDP, the Board finds that the limit of 30 m² would not allow for prudent and efficient use of the land nor would it allow for re-investment given that the entire suite would be limited to some 323 ft². The Board finds that a variance to the Maximum Floor area to allow for a Backyard Suite totalling 145 m² is appropriate and grants the same.

60. The Board considered the proposed Conditions set forth in Exhibit H of the Development Authority's submission Exhibit C.1. The Board heard no objections from the Appellant arguing that these conditions should not be imposed. Given the nature of the conditions, the Board finds that they are reasonable because they ensure continued compliance with the provisions of the ZB, and ensure the City is not burdened with any additional costs related to the construction of the proposed development. The Board agrees with the request from the Development Authority to impose conditions as written apart from condition No. 5 which is amended to read as follows: *"The Applicant shall ensure that the exterior of the principal dwelling is finished in a manner that is similar to or complements the exterior of Backyard Suite to the satisfaction of the Development Officer. This must be completed prior to occupancy of the Backyard Suite."*
61. The Board thanks the parties and affected persons for their time and submissions regarding this matter.

CLOSING:

62. For these reasons, the decision of the Municipal Planning Commission is overturned and the application is approved with conditions as stated above.

Dated at the City of Red Deer, in the Province of Alberta, this 4th day of March, 2025 and signed by the Presiding Officer on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



Tim Heger, Presiding Officer
Subdivision and Development Appeal Board

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

Exhibit A.1:	Hearing Materials	13 pages
Exhibit B.1:	Appellant Submission	6 pages
Exhibit C.1:	Development Authority Submission	145 pages
Exhibit D.1:	Additional Area Landowner Submissions	3 pages