Red Deer Tribunals

Subdivision and Development Appeal Board

Appeal No.: SDAB 002 2025
Hearing Date: April 8, 2025

SUBDIVISION AND DEVELOPMENT APPEAL BOARD DECISION

PRESIDING OFFICER: T. HEGER
PANEL MEMBER: S. CROOKS
PANEL MEMBER: D. WIELINGA

BETWEEN:

REFIT HOMES INC.
Represented by Carlos Settle & Isabelle Settle

Appellant

and

CITY OF RED DEER
Represented by Debbie Hill, Senior Development Officer & Marilee Murgatroyd, Associate City Solicitor

Development Authority

DECISION:

The Subdivision and Development Appeal Board (the "Board") confirms the decision of the Municipal Planning Commission on February 19, 2025, which denied the Appellant's application for a Development Permit for a two-bedroom Backyard Suite above a new detached garage at 4613 46 Street (Lots 30 & E ½ Lot 31, Block, E Plan 3591 P) (the "Lands").

A detailed summary of the decision follows.

JURISDICTION, ROLE OF THE BOARD, AND PRELIMINARY MATTERS

1. The Subdivision and Development Appeal Board (the "Board") is governed by the Municipal Government Act, RSA 2000, c. M-26 as amended (the "MGA"). Planning and Development is addressed in Part 17 of the MGA, and also in the Matters Related to Subdivision and Development Regulation, Alta Reg 84/2022 (the "SDR").

2. 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 under the MGA and the City of Red Deer Zoning Bylaw 3357/2024, May 13, 2024 (the "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 parties did not raise any preliminary issues for the Board to decide.

5. The Board indicated that it would first hear from the Development Authority, then the Appellant, then anyone else affected by the appeal. Following the submissions from the affected parties the Board provided the Appellant and the Development Authority an opportunity to respond to anything arising from affected parties' comments. There was no objection to the process as set out by the Board.

BACKGROUND

6. On December 16, 2024, the Appellant filed an application for a Development Permit to construct a two-bedroom Backyard Suite above a new detached garage (the "Application"). On February 19, 2024, the Municipal Planning Commission considered the Application, and refused a development permit 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 the section 12.20.1. and section 12.20.7 of the Zoning Bylaw. [sic]
   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 application 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, given the historic character of the neighbourhood.

7. The Appellant filed an appeal on February 19, 2025.

8. On March 13, 2025, the hearing was convened by written submissions for the sole purpose of adjourning to an alternate date. The Board approved the adjournment request and adjourned the hearing to April 8, 2025.

9. On March 13, 2025, a Notice of Hearing was issued to the Appellant, the City Development Authority (the "Development Authority"), and to the registered owners of the 69 properties that are within 100 meters of the Lands.

10. Prior to the hearing, the Board received written materials from the Appellant, the Development Authority, and members of the public. The Board marked as exhibits the documents found in Appendix A. During the hearing, the Board received additional written submissions from an interested party. A copy of the written submissions was circulated to the parties. The Board marked the additional written submissions as an exhibit.

SUMMARY OF EVIDENCE AND ARGUMENT

The Development Authority

11. The Lands are zoned as R-L Residential (Low-Density) ("R-L Zone") under the City of Red Deer Zoning Bylaw 3357/2024 (the "Bylaw"). The Lands are also subject to the Development Area regulations and the Parkvale Overlay.

12. The proposed development is for a two-bedroom Backyard Suite above a new detached garage. The proposed development would include a total developed floor area of 111.0 m^2. The footprint of the principal dwelling is 73.664m^2.

13. Backyard Suite means "a use where an Accessory Building contains a Dwelling Unit that is located separate from the principal Dwelling Unit that is a House or a Manufactured Home" (s. 1.60 of the Bylaw). A Backyard Suite is a discretionary use in the R-L Zone.

14. Section 4.50 of the Bylaw provides regulations for Backyard Suites. Section 4.50.5 provides that a maximum of 15% of the Houses in a neighbourhood may have either a Backyard Suite or a House Suite. Section 4.50.10 provides the dimensions for a Backyard Suite:

Site Area	Minimum 360.0 m^2
Site Frontage	As required for the Principle Use the Backyard Suite is accessory to, under the Zone regulations for the Site.
Building Height	Maximum: 2 storeys with an overall maximum height of 10.0 m measured from Grade.
Floor Area	Maximum: 75% of the Building Footprint of the principal Dwelling Unit
Side Yard Setback	Minimum: Same as Site's Zone regulation
Rear Yard Setback	Minimum: the larger of: • 0.9 m, or • The width of any registered easement or right of way plus 0.5 m
Separation Distance between Backyard Suite and primary Dwelling Unit	Minimum: 2.5 m

15. Section 12.20 of the Bylaw is the Parkvale Overlay. Section 12.20.1 provides:

> This Overlay requires new Dwelling Units and Accessory Buildings in the Parkvale neighbourhood to be sensitive to existing Development, and to maintain the character of the Immediate Road Context.

16. Section 12.20.7 provides:

> For new Development, the Development Authority will consider rooflines that complement the architectural character of the Immediate Road Context and the preference will be for a peaked roof within the maximum Building Height.

17. The Development Authority set out the Board's authority under the *Municipal Government Act* (the "MGA"). Under section 687(3) the Board must consider whether the proposed development aligns with applicable statutory planning documents. However, the Board has a broad power to approve the development, even if it does not comply with the zoning bylaw. The Board may

make an order approving a development that does not comply with the Bylaw, where the Board finds that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

18. The proposed development does not comply with the Bylaw, because the proposed floor area of the Backyard Suite exceeds 75% of the footprint of the principal Dwelling Unit on the Lands. The maximum allowable floor area based on the formula set out in the Bylaw would be 55.75 m^2; therefore, the requested development permit would require a 100.9% variance.

19. The Development Authority argued that the size of the variance alone does not determine the impact. When considering the proposed variance, the Board should consider that the principal Dwelling Unit is only 700 sq ft. A larger suite accommodates livability and is consistent with modern use of property. Approving the development would also promote reinvestment into older neighbourhoods.

20. With respect to the Parkvale Overlay, the Development Authority argued that the proposed development includes a sloped “shed” roof, which enhances its compatibility with the neighbourhood, as the slope reduces the mass of the building and shadows. Existing homes in the neighbourhood have a wide variety of roofs, facades, and materials.

21. The Development Authority argued that the purpose of Part 17 of the MGA is to promote the orderly development of land and must balance the interests of individuals who wish to develop their land with the interests of neighbouring parcels. There is no absolute right to amenities.

22. The Development Authority noted that “storey” is not a defined term in the Bylaw. The Development Authority considers the proposed development to be a 2-storey building with a loft. The loft space is only accessible through a bedroom and would be a relatively small space. If the loft were not developed, the size and roofline of the proposed development would not be changed.

23. There is an apartment block across the laneway from the proposed development. The apartment is a 2-storey building, and the roof is 8.68 m tall. The proposed development is 9.72 m tall, measured from grade.

24. With respect to parking, there is more parking proposed to be provided on the Lands than is necessary. The amount of parking is based on the number of bedrooms on the site.

25. With respect to other Houses in the neighbourhood with suites, if this Backyard Suite were to be approved, there would be 22 suites, which is 4 less than the maximum number permitted under the Bylaw. The Development Authority does not count illegal suites; however, if an illegal suite is brought to the City’s attention, then the owner has the option to apply for a legal suite or remove it.

26. In rebuttal submissions, the Development Authority confirmed that the existing house on the Lands is likely legal non-conforming with respect to setbacks, given that it was built prior to the

current Bylaw. If the house is demolished, the new house would need to conform to the Bylaw as it exists at that time.

27. The Development Authority requested that Board approve the proposed development, with conditions that: the proposed development confirm to approved plans, any damage done to public property due to construction be repaired to the satisfaction of the City, and that one parking stall on the Lands is available for the exclusive use of the occupant of the Backyard Suite.

The Appellant – Refit Homes Inc.

28. The Appellant argued that the original development permit was rejected by the Municipal Planning Commission based on misunderstanding and subjective decision making.

29. The proposed development is under 10m tall, which is consistent with the Bylaw. A carriage house style Backyard Suite is also well suited to the neighbourhood. There are a number of different styles of rooflines on the other side of the park that face the proposed development. A Backyard Suite increases affordable housing and is consistent with the City's objective to support infill development and redevelopment.

30. With respect to the square footage, the comparison is the footprint of the house, not the living space. The house on the Lands was built in 1925, when homes were much smaller. We should not be limited to building to 1925 size standards.

31. The Appellant argued that they should not be penalized for going about the proposed development the right way, as opposed to illegal secondary suites. They want to improve the neighbourhood.

32. The Appellants considered the ordering of redevelopment. There is currently a tenant living in the house on the Lands, and they did not want to have to move the tenant out right away.

33. When choosing the design for the Backyard Suite, the Appellant considered the height, placement of windows, and view impacts on the neighbours. There is a patio space that faces the park across the lane, which results in a "cut-out" from the main building. The sloped roof means that neighbouring properties will get sun sooner than they otherwise would. The windows in the main living space face the park to promote privacy for the neighbours and the residents of the Backyard Suite.

34. In rebuttal submissions, the Appellants acknowledged that if they were to demolish the existing house on the Lands, the new home they build would be required to comply with the current Bylaw's setback requirements.

35. The Appellants requested that the development permit be approved by the Board.

Other Evidence and Argument

Gaston Girard

36. Mr. Girard lives in a home adjacent to the proposed development.

37. Mr. Girard argued that the size of the proposed development was excessive and had a significant impact on the use and enjoyment of his property. The proposed 30-foot wall facing his property is too large. The proposed development is much larger than most of the houses in the neighbourhood. He argued that the proposed development would block the sun in his yard due to the height. He further expressed privacy concerns with respect to the patio, and the windows facing the park.

Virginia Hayes

38. Ms. Hayes lives on 45th Street, in the neighbourhood.

39. Ms. Hayes argued that the neighbourhood was under attack. Parkvale is a neighbourhood for young families and retirees. She expressed concern with developers who are generating income from properties. She questioned whether the proposed development would promote affordability.

Rachel Beltran

40. Ms. Beltran lives on 45th Street, in the neighbourhood.

41. Ms. Beltran advised that she moved into the neighbourhood 11 years ago. When she moved in the neighbourhood reminded her of home on the coast. She does not want to see the population of the neighbourhood increase, as her family likes it the way it is. The proposed development does not fit right with the neighbourhood, which is why she opposes it.

Tamara Cook

42. Ms. Cook lives on 46th Street, in the neighbourhood.

43. Ms. Cook expressed disappointment that the proposed development was being appealed. She argued that the City needs to conduct a complete review of development in mature neighbourhoods. She argued that the proposed development creates a dangerous precedent and questioned why developers have more control over the people who live in the community.

44. Ms. Cook questioned whether the utilities in the neighbourhood, which were constructed in 1905, would be up to the required standard to increase density.

45. Ms. Cook argued that there is enough affordable housing in Red Deer. This development will have impacts on the lives of the residents, and long-term consequences. More needs to be done to hold people and processes accountable.

Devon Swainson

46. Mr. Swainson lives on 46th Street, in the neighbourhood.

47. Mr. Swainson argued that this proposed development sets a dangerous precedent for all of Red Deer. The proposed development does not meet any of the guidelines and is not good looking. There are already 300-400 affordable units being built in Red Deer, so this proposal will not make a difference.

48. Mr. Swainson expressed concern with the way the City measures density, noting there are duplexes, fourplexes, and an apartment building in the neighbourhood.

Nikola Dopudj on behalf of Alexandra Dopudj

49. Mr. Dopudj lives on 46th Street, in the neighbourhood.

50. Mr. Dopudj argued that the primary residence on the property should be redeveloped before the Backyard Suite. Other municipalities in Alberta allow for Backyard Suites that are smaller than what is being proposed. Those municipalities also impose shorter height restrictions than Red Deer. He further argued that there were already several suites along the back lane, and there should be a limitation on the number of suites.

Len Carlson

51. Mr. Carlson lives approximately 100 meters from the proposed development. He is the President of the Parkvale Community Association.

52. Mr. Carlson adopted the submissions of the other interested parties.

53. Mr. Carlson expressed concern that the density numbers used by the City are antiquated and obsolete. He also noted that the back alleys in Parkvale are extremely busy already.

Jo-Anne Hallman

54. Ms. Hallman owns four properties in Parkvale, including one on 45th Street, and one on 46th Street.

55. Ms. Hallman argued that the Board should visit the neighbourhood to review the site of the proposed development. She argued that the back alley adjacent to the proposed development is the busiest alley in the neighbourhood and is very congested.

Helen Craig

56. Ms. Craig lives on 47th Street, in the neighbourhood.

57. Ms. Craig argued that it would be useful for the Board to travel to the neighbourhood to review the Lands, rather than rely on someone else's viewpoint and photographs. Ms. Craig expressed concern regarding how construction could take place with a large power pole and mountain ash tree in the front. She also argued that if this development is permitted, there would be nothing to stop other people from doing the same thing.

Dawna Allard

58. Ms. Allard lives on 45A Avenue, in the neighbourhood.

59. Ms. Allard expressed concern over the magnitude of the variance requested. She also expressed concern that the proposed development was actually 3 storeys, because it included the loft space. Ms. Allard noted other municipalities have different height requirements for secondary suites over garages.

Other Written Submissions

60. In addition to the oral submissions, the Board received and reviewed the written submissions of other potentially affected parties.

FINDINGS AND REASONS

Disclosure of Records

61. Following one of the short adjournments during the hearing, it came to the Board's attention that one of the people who wished to speak to the Board had raised a concern with Board staff that she had not had a chance to review the materials that were before the Board in advance of the hearing.

62. When the Board reconvened the hearing, the Board asked if anyone present needed more time to review materials, and whether anyone was requesting an adjournment of the hearing. The individual who raised the concern indicated that she had time to review the materials and was not requesting an adjournment. The Board clarified with all other persons present that no one else was requesting an adjournment.

Jurisdiction

63. The Board notes that its jurisdiction is found under section 687(3) of the MGA. In making the decision below, the Board examined the provisions of the Bylaw and considered the oral and written submissions of the parties.

Affected Persons

64. The first question the Board must determine is whether those individuals who made written submissions and appeared before the Board are affected parties.

65. As the person who applied for the development permit, the Appellants are affected by this Appeal.

66. With respect to the written and oral submissions, the Board accepts that each of the other people who made submissions are affected parties. In making this finding, the Board considered

that the individuals who made submissions all live in relatively close geographic proximity to the proposed development. In the case of Mr. Girard, he lives immediately next-door to the proposed development. Other affected parties use the same laneway that the proposed development faces. The Board also notes that no party raised an objection to the participation of any other party during the course of the hearing.

Issues to be decided

67. The Board must determine the following issues:
    i. What is the nature of the use of the proposed development?
    ii. Is the use permitted or discretionary?
    iii. Does the proposed development meet the regulations of the Bylaw?
    iv. If not, should the Board exercise its variance power under s. 687(3) to allow the proposed development to proceed?

The nature of the use of the proposed development is Backyard Suite

68. There was no dispute between the parties that the proposed development is a Backyard Suite, as defined by the Bylaw. The Board finds as a fact that the proposed development is a Backyard Suite.

Backyard Suite is a discretionary use in the R-L Zone

69. There was no dispute between the parties that section 6.10.3 of the Bylaw provides that a Backyard Suite outside of the Timberlands North neighbourhood is a discretionary use in the R-L Zone. The Board finds that the proposed development is a discretionary use in Parkvale.

The proposed development does not meet the regulations of the Bylaw due to the floor area.

70. The Board finds that the proposed development does not meet the regulations of the Bylaw, because the proposed floor area of the Backyard Suite exceeds the maximum 75% of the Building Footprint of the principle Dwelling Unit on the lands.

71. There was no dispute between the parties regarding the proper interpretation of the two operative measurements to assess the floor area of the proposed development: the floor area of the Backyard Suite and the Building Footprint of the principal Dwelling Unit.

72. The floor area of the proposed Backyard Suite is 111.0 m^2. The Development Authority calculated the floor area by taking into consideration all of the livable space of the proposed development, but not including the garage. A Backyard Suite is defined as “where an Accessory Building contains a Dwelling Unit that is located separate from the principal Dwelling Unit that is a House or a Manufactured Home”. A Dwelling Unit is defined as “a self-contained Building, or part of a Building, usually containing cooking, eating, living, sleeping and sanitary facilities and used, or designed to be used as a permanent residence by a household”. Therefore, the plain language meaning of the word “contains” in the definition of Backyard Suite means that the

Dwelling Unit forms part of the Accessory Building, but does not necessarily include the entire Accessory Building.

73. When calculating the floor area of the Backyard Suite, which is a Dwelling Unit, it was appropriate in this case to consider all of the liveable space designed to be used as a Dwelling Unit, not including the garage. In this case, the calculated floor area included the office/workshop and restroom next to the garage, the main floor of the suite, and the loft space.

74. The Board accepts that the Building Footprint of the principal Dwelling Unit is 73.664 m^2. Building Footprint is a defined term in the Bylaw and means "the area of a Building measured from the outer surface of the exterior of the Building at Grade level."

75. Based on the calculation set out in the Bylaw and the Building Footprint, the maximum size for a Backyard Suite would be 55.25 m^2 (594 ft^2). Therefore, a 100.9% variance would be required to permit a 111.0 m^2 Backyard Suite.

76. The Board notes that several interested parties raised concerns with the height of the proposed development in their written and oral submissions. The Bylaw provides the maximum height for a Backyard Suite is 10.0 m from grade, and that the proposed development is 9.72m tall. Therefore, the height of the proposed development is not contrary to the Bylaw.

77. Several parties also asserted that the building was a three-storey building as opposed to a two-storey, because of the inclusion of the loft space. Given the Board's finding that the floor area of the proposed development exceeds the permitted floor area in the bylaw, it was not necessary for the Board to conclude whether the proposed development was two or three storeys. As an aside, the Board notes only that a storey is not a defined term in the Bylaw, and one possible interpretation of the proposed development was that it was three-storeys.

78. Finally, several interested parties made submissions with respect to the maximum number of secondary suites and densification. The Board accepts the explanation of the Development Authority that it only counts legal secondary suites in its assessment of the number of Backyard Suites and House Suites for the purpose of the Bylaw. It would be impossible for the Development Authority to count illegal suites that the City is not aware of, and the Board questions how the Development Authority could even achieve such a count. The Board accepts the evidence of the Development Authority that the proposed development would not put the neighbourhood over the 15% threshold for suites set out in the Bylaw.

79. Given that the proposed development does not meet the requirements of the Bylaw, the Board went on to consider whether it should exercise its variance power under s. 687(3) of the MGA.

The proposed development materially interferes with the use, enjoyment or value of neighbouring parcels of land.

80. The Board's variance power under section 687(3)(d) of the MGA provides:

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

(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.

81. In the Board's view, the language of section 687 is intended to grant broad authority to the Board to consider and grant variances. As the Court of Appeal noted in *Edmonton (City of) Library Board v Edmonton (City of)*, 2021 ABCA 355 (CanLII) at paras 46-47:

> Section 687(3)(d) gives an appeal board wide discretion in deciding whether the negative effects condition has been met as confirmed by language such as "may", "in its opinion", "unduly" and "materially"…
> … that power is not limited to cases of undue hardship or unique or minor situations.

82. The Board agrees with the submissions of the Development Authority, that the qualifying language of "unduly interfere" and "materially interfere" in s. 687(3)(d) suggest that a variance can be granted even if a proposed development has some impact on the amenities of the neighbourhood, or some impact on the use, enjoyment, or value of neighbouring lands. Indeed, in nearly every case of development there will be <u>some</u> impact. The legal test recognizes this and is intended to be flexible enough for the Board to meet with legislative objectives of balancing private interests of landowners to develop, against the interests of neighbours and the broader community. If the legal test is applied too strictly, the effect would be to extinguish development completely.

83. The Board first considered whether the proposed development would materially interfere with the use, enjoyment or value of the neighbouring lands. The height of the proposed development on the eastern side is nearly 10m. The Board finds that a structure of this size would materially interfere with the sun in the backyard for the immediate neighbour, particularly during the times of the year when the sun is lower in the sky.

84. The relative size of the proposed development is also a factor in assessing the materiality of the interference. While the Board accepts that the Bylaw contemplates Backyard Suites may be as tall as 10 m, the evidence before the Board was that most of the buildings in the neighbourhood were single storey. Even the roof of the two-storey apartment across the laneway was over a meter shorter than the proposed development.

85. Further, the location of the Lands, in the middle of the block, is also a factor the Board considered when weighing the materiality of the impact. In the Board's view, the fact that the proposed development would be the tallest building in the area, located in the middle of the block, has a greater impact than if it were, for example, on a corner lot.

86. Finally, the Board also considered the privacy impacts on the use and enjoyment of neighbouring properties. The proposed development includes a second-storey balcony. In the

Board's view, the balcony would materially interfere with the use and privacy of the neighbouring yard, given that the balcony would be higher than any fence between the Lands, and neighbour's properties. An individual using the balcony would have a direct line of site into the yard of the neighbouring parcel on the east side. The height of the balcony and its placement would both have material impacts on the use and enjoyment of neighbouring property. The Board also notes that the proposed design includes a window in the loft space that would also look directly into the east side neighbouring yard from height. This too would have an impact on the privacy of the neighbour, and the use of their yard.

87. The Board finds that the large size of the development, its location as a middle lot, and the privacy implications of the balcony and eastern windows, would materially interfere with the use and enjoyment of neighbouring lands. Therefore, the Board declines to exercise its variance power under section 687.

88. While not determinative of this appeal, there were several additional arguments that were raised before the Board in writing and orally. Page 67 of the Development Authority written submissions includes a summary of the arguments raised, and the number of responses. The Board observes that many of the written and oral arguments it received did not deal with issues over which the Board has any authority. The role of the Board is limited to assessing the development permit appeal application that is before it, based on the Bylaw as it exists at the time. In reaching its decision, the Board did not give any weight to arguments about future development applications, arguments about prior versions of the Bylaw or possible future versions of the Bylaw, or policy arguments about densification and redevelopment. SDAB hearings are not the appropriate venue to hear arguments about the efficacy of the Bylaw, or to host larger policy debates.

CLOSING:

89. For these reasons, the decision of the Municipal Planning Commission is confirmed, and the application for a development permit is dismissed.

Dated at the City of Red Deer, in the Province of Alberta, this 23rd day of April, 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

T. 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	11 pages
Exhibit B.1:	Appellant Submissions	4 pages
Exhibit C.1:	Development Authority Submissions	108 pages
Exhibit D.1:	Letter from D. Morey to Board	2 pages
Exhibit D.2:	Letter from T. Cook to Board	2 pages
Exhibit D.3:	Letter from D. & G. Allard to Board	4 pages
Exhibit E.1:	Letter from K. Waite to Board	2 pages