SUBDIVISION AND DEVELOPMENT APPEAL BOARD

AGENDA

DATE: **Wednesday, Nov 13, 2024**
TIME: **6:00 p.m**.
PLACE: Council Gallery, 3rd flr, St. Albert Place
FILE: B02

---

1. Adoption of Agenda

2. Radius Notifications

3. Appeal

28 Cannes Cove, St. Albert, AB

The Appellant is appealing a decision of the Development Officer in refusing a Development Permit application for a single-detached dwelling with attached garage, basement development, and rear deck.

4. Adjournment

ALLOWED WITH CONDITIONS

CITY OF ST. ALBERT

SUBDIVISION AND DEVELOPMENT APPEAL BOARD DECISION
SDAB #LEG00972 - 2024

Re: PLAN 2322065; BLOCK 4; LOT 14 - known municipally as 28 Cannes Cove, St. Albert, AB.

Regarding the appeal of a decision of the Development Officer in refusing a development permit application for a single detached dwelling with attached garage, basement development and rear deck.

The Appellant had no objection to the members of this Board hearing and deciding this Appeal.

Also, none of the members of the Board identified a conflict that would prevent them from hearing this matter.

The Board considered the Development Officer's written report and heard from the Development Officer who stated that:

The appellant is appealing the refusal of a development permit application for a Single Detached Dwelling. Land Use Bylaw 9/2005, Section 8.35(9)(a) states that the maximum lot coverage in this land use district (RX) is 40% for a single detached house. The house is proposed with 43.65% lot coverage. In accordance with Section 3.14(2)(a), the Development Officer cannot vary lot coverage.

The Development Authority does not support the appeal as it exceeds maximum lot coverage requirements in accordance with Land Use Bylaw 9/2005. The application pertains to the construction of a new home in a newly developing area characterized by a standard building lot and devoid of encumbrances that would limit the ability of the builder to adhere to established lot coverage requirements. The maximum lot coverage percentages specified in the Land Use Bylaw are designed to ensure that a portion of each lot remain unobstructed by structures. The Development Authority has advised the appellant that lot coverage requirements can be met with a design change to the proposed dwelling.

It may interest the Board to note the following: Maximum lot coverage: 40%
Proposed lot coverage: 43.65%
Variance required: 3.65% or 15.79 sq. metres or 170 sq. feet. The Development Officer cannot vary lot coverage.

If the Board approves the appeal, the following conditions should be noted on the decision:

1. Development Permit approval is issued for the construction of a single-detached dwelling with attached garage, deck and basement development, issued in accordance with the provisions of Land Use Bylaw 9/2005.

2. No portion of a fireplace chase or cantilevered section including eaves shall project more than 0.6 metre into a required sideyard.

3. The finished floor of the main level shall not be located more than 2.0 m above the finished grade.

4. The dwelling shall be constructed in accordance with approved site plan.

5. The dwelling height shall not exceed 11.0m.

6. The maximum lot coverage shall be permitted by SDAB at 43.65%.

7. Any proposed changes in design, elevation or site plan configuration shall first be submitted for review by the Development Officer and any such changes shall not be undertaken until written authorization is provided by the Development Officer.

8. The exterior finishes must be completed within two (2) years of the date of the development permit.

9. The deck as approved shall remain uncovered and unenclosed.

10. Future deck and basement development shall be subject to a separate development permit application.

11. The landscaping shall be completed within two (2) years of the date of development permit approval.

12. Failing to comply with the conditions of development permit approval shall render this permit invalid.

NOTES:

a) A person applying for, or in possession of, a valid development permit is not relieved from full responsibility for ascertaining and complying with or carrying out development in accordance with the conditions of any covenant, caveat, easement or other instrument affecting the building or land.

b) The applicant shall be responsible for compliance with all applicable Federal, Provincial and Municipal laws, regulations and standards, as well as ensuring compliance with, and be responsible for obtaining, all applicable permits, licenses and approvals, at its own expense.

c) All construction must conform to the relevant requirements of the Alberta Building Code, the City of St. Albert municipal engineering standards and all applicable codes, laws, regulations and standards.

d) The City of St. Albert does not conduct independent environmental checks of land within the city. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of St. Albert, in issuing this development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on or within the property.

e) The city property on or adjacent to development including, but not limited to; the existing sidewalk, curb and boulevard features shall be protected from damage throughout the construction process. Damage caused by the owner, builder, tradesman or suppliers shall be repaired to the satisfaction of the City of St. Albert Engineering Services. An inspection of the existing site conditions must be completed by city staff prior to commencement of the work. All snow and debris shall be removed from the sidewalk areas for the inspection. If necessary, a city representative will contact the applicant and request the site be cleared for inspection, prior to demolition and commencement of construction.

The Board heard from the Appellant who stated that:

The Appellant was represented by Christopher Mowser who made submissions in person. The only other information the Board had from the Appellant was the short submission in its Development Appeal Form setting out Reasons for Appeal, the plot plan and elevation drawings for the proposed residence.

The written reasons for appeal stated:

> *"we are constructing a Banglow (sic) on this lot for an old couple and is going over 3.65% lot coverage according to city requirement. if we try to do a 40 percent coverage it is making a big difference in the house size and which can be deal breaking too. so, we want to apply this appeal to get an (sic) variance for 3.65%."*

In his submission to the Board, Mr. Mowser advised that the proposed plan would have to be reduced by 170 square feet to fit the lot with 40% lot coverage, and this would affect the interior space.

This would affect the lifestyle of the new owners of the residence and they have a special needs child that would be affected as well.

He also indicated that a reduction in size could be made but it would affect the living space as designed.

The Board also considered/reviewed the following

The proposed development is in a new area with many undeveloped lots so there were no submissions in support or in opposition. Also, there was no one in attendance to speak for or against the appeal.

When the Board adjourned the hearing after hearing submissions, to commence its deliberation, the Board sought clarification from the Development Officer on a submission in her written submissions and requested that the Clerk provide to the Board and the parties a copy of Land Use Bylaw 9/2005. The Board then requested that if the Development Officer and the Appellant had any comments about the requests they should provide them through Counsel.

The Board sought clarification from the Development officer on a specific portion of her written submissions as to the definition or meaning of:

> *"The maximum lot coverage percentages specified in the Land Use Bylaw are designed* to ensure that a portion of each lot remain unobstructed by structures*."* [emphasis added]

In response the Development Officer advised that the intent of the lot coverages was to ensure that no overly large homes were massing on smaller lots. Mr. Mowser had no comments on this response.

In response to the Land Use Bylaw being provided to the Board, the Board received two submissions that it reviewed. A third response submission from the Development Officer was not reviewed or considered.

The Development Officer advised:

> *"Good morning,*
> *Please find attached the PDF version of Land Use Bylaw 9/2005.*
>
> *28 Cannes Cove is located in the RX Land Use District.*
>
> *It may interest the Board to note that Section 8.35(9)(a) identifies that the maximum lot coverage for a single detached house is 40% for the principal building and garage, and 42% including accessory building.*
>
> *It may also interest the Board that the lot coverage has remained the same in the new Land Use Bylaw 18/2024."*

The Appellant provided a response from Manvi Devgan, which advised:

> *"Good afternoon,*
>
> *Regarding this property 28 Cannes Cove, the actual footprint of the property meets all additional requirements for being a RSL lot.*
>
> *The item in question is the over all length of property and how it is encroaching on the storm pond.*
>
> *This does not impact other dwellings in the area or a back access road for an alley way.*
>
> *To accommodate these requirements from the city, we then would have to remove from the actual living area and bedroom space of this property.*
>
> *Thank you,"*

These submissions were considered by the Board along with the submissions from the hearing and the written submissions from the parties.

The Board finds the following:

The lot where the proposed dwelling is to be constructed is in the R(X) Zone which has lot coverage restricted to 40%.

The Development Officer provided two reasons for dismissing the application for the development permit. There were:

1. Reduction of massing effect from the proposed dwelling; and

2. To provide unobstructed space.

The Land Use Bylaw provides further information which can be inferred from its regulations, this includes:

3. To regulate or promote density. In other words, higher density lots are allowed more lot coverage.

The Board finds inherent difficulties with all three of these reasons. First is the issue of massing:

1. A bungalow at 43% percent lot coverage (like the proposed dwelling) actually would have less massing than a two storey house at 40% percent lot coverage because the massing is actually doubled to 80% percent on the building footprint on a two storey

house, by virtue of the extra level, compared to the extra 3% coverage for the proposed dwelling which is a bungalow.

2. Setback regulations also exist which can control the impact of massing. All setback requirements are met and comply with the Land Use Bylaw.

3. Therefore, if all setbacks and height regulations are met, the extra massing will be absorbed within allowable setbacks for the proposed dwelling.

Second, is the issue of "unobstructed space":

1. There is no definition of "unobstructed space" in the Land Use Bylaw, therefore when used in the literal sense, it would equate to open space.

2. One comparable is Amenity Area. Amenity Area is already regulated in the Land Use Bylaw. The idea of unobstructed space is analogous to extra Amenity Space. This is not set out in the Land Use Bylaw, but the Land Use Bylaw does regulate set back requirements. These are met by the proposed dwelling.

As such, the Board finds the City's necessity to provide 40% percent lot coverage problematic for the proposed dwelling. Further as there is no information on negative impact to the adjacent neighbours, the Appeal is allowed with the conditions and notes as proposed by the Development Officer.

Allowed with conditions:

The Subdivision and Development Appeal Board of the City of St. Albert hereby grants the Appeal to construct a single detached dwelling with attached garage, basement development and rear deck located at 28 Cannes Cove, St. Albert, AB.

The development is approved with the following conditions:

Conditions

1. Development Permit approval is issued for the construction of a single-detached dwelling with attached garage, deck and basement development, issued in accordance with the provisions of Land Use Bylaw 9/2005.

2. No portion of a fireplace chase or cantilevered section including eaves shall project more than 0.6 metre into a required sideyard.

3. The finished floor of the main level shall not be located more than 2.0 m above the finished grade.

4. The dwelling shall be constructed in accordance with approved site plan.

5. The dwelling height shall not exceed 11.0m.

6. The maximum lot coverage shall be permitted by SDAB at 43.65%.

7. Any proposed changes in design, elevation or site plan configuration shall first be submitted for review by the Development Officer and any such changes shall not be undertaken until written authorization is provided by the Development Officer.

8. The exterior finishes must be completed within two (2) years of the date of the development permit.

9. The deck as approved shall remain uncovered and unenclosed.

10. Future deck and basement development shall be subject to a separate development permit application.

11. The landscaping shall be completed within two (2) years of the date of development permit approval.

12. Failing to comply with the conditions of development permit approval shall render this permit invalid.

NOTES:

a) A person applying for, or in possession of, a valid development permit is not relieved from full responsibility for ascertaining and complying with or carrying out development in accordance with the conditions of any covenant, caveat, easement or other instrument affecting the building or land.

b) The applicant shall be responsible for compliance with all applicable Federal, Provincial and Municipal laws, regulations and standards, as well as ensuring compliance with, and be responsible for obtaining, all applicable permits, licenses and approvals, at its own expense.

c) All construction must conform to the relevant requirements of the Alberta Building Code, the City of St. Albert municipal engineering standards and all applicable codes, laws, regulations and standards.

d) The City of St. Albert does not conduct independent environmental checks of land within the city. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of St. Albert, in issuing this development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on or within the property.

e) The city property on or adjacent to development including, but not limited to; the existing sidewalk, curb and boulevard features shall be protected from damage throughout the construction process. Damage caused by the owner, builder, tradesman or suppliers shall be repaired to the satisfaction of the City of St. Albert Engineering Services. An inspection of the existing site conditions must be completed by city staff prior to commencement of the work. All snow and debris shall be removed from the sidewalk areas for the inspection. If necessary, a city representative will contact the applicant and request the site be cleared for inspection, prior to demolition and commencement of construction.

The Board makes its decision for the following reasons:

1. The Board concludes that (in accordance with section 687(3)(d) of the Municipal Government Act) the variance will not unduly interfere with the amenities of the neighbourhood, and/or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land based on the following because:

   a. There was no opposition from the adjacent lots as most were vacant without any houses constructed as of yet;

   b. The proposed dwelling backs onto a storm retention pond and therefore there is no issue regarding the dwelling and any neighbours to the rear;

   c. The proposed dwelling complies with the front, side and rear set-back requirements; and

   d. There were no objections to the proposed variance.

2. The proposed development conforms with the use prescribed for the land within the Land Use Bylaw.

The Applicant is responsible for complying with all applicable federal, provincial and municipal enactment and any other applicable law and for obtaining all applicable permits, licenses and approvals. Building permits must be obtained from the Building Inspector who can be contacted at 780-459-1655.

Michael Kirk
Michael Kirk (Nov 26, 2024 15:10 MST)

Chair

November 26, 2024

Date