



AGENDA

INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD (ISDAB)

ROOM 241, LEDUC COUNTY CENTRE, NISKU

Thursday, August 12, 2021

1. Order and Roll Call – 9:00 a.m.

2. Agenda Adoption

3. Adoption of Previous Minutes

- * July 16, 2021 Intermunicipal Subdivision and Development Appeal Board Meeting (re: D20-243)
- * July 16, 2021 Intermunicipal Subdivision and Development Appeal Board Meeting (re: D21-107)
- * July 20, 2021 Intermunicipal Subdivision and Development Appeal Board Meeting

4. Subdivision and Development Appeal Hearing - D07-2021

* a) 9:00 a.m.

Apellant / Applicant	RMD Sales (Robert Dow)
Landowner's name	James Doohan
Leduc County Municipal Roll #	7502100
Legal description of subject property	Lot 5, Block 2, Plan 3924HW, Pt. SW 28-47-1-W5
Municipal address	520 47402 Rge Rd 13, Moonlight Bay
Nature of development application	Accessory Building (Garage) - 64.66 m ² (695.99 ft. ²)
Development permit application #	D21-190

5. Adjournment

Legend

* Items Attached To Agenda

MINUTES OF THE INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEETING, LEDUC COUNTY, HELD ON THURSDAY, AUGUST 12, 2021 IN ROOM 241 OF THE COUNTY CENTRE BUILDING, NISKU, ALBERTA.

Order and Roll Call

The meeting was called to order at 8:57 a.m., Thursday, August 12, 2021 by Chair Mary-Ann McDonald, and Board Members Kevin Maine, Pat Rudiger, Doug Ruel and Rod Giles present.

Also present were:

- Joyce Gavan, Clerk
- Lynn White, Recording Secretary
- Colin Richards, Supervisor - Development Services
- Jim Doohan, Appellant (landowner)
- Pierrette Doohan, Appellant (landowner)
- Robert Dow, Applicant

Agenda Adoption

52-21 Board Member Giles -- that the agenda for the August 12, 2021 Intermunicipal Subdivision and Development Appeal Board meeting be accepted as circulated.

Carried

Adoption of Previous Minutes:

- July 16, 2021 - D20-243

- July 16, 2021 - D21-107

- July 20, 2021 - SD21-018

53-21 Board Member Rudiger -- that the following Subdivision and Development Appeal Board minutes be confirmed as circulated:

- July 16, 2021 - D20-243 (leave as sited dwelling - converted industrial trailer);
- July 16, 2021 - D21-107 (home based business Type 3 - petting zoo)
- July 20, 2021 - SD21-018 (subdivision of parcel - NE 13-49-26-W4)

Carried

Appeal by Jim Doohan, on behalf of RMD Sales (Robert Dow) - refusal by the development authority of Development Permit Application D21-190 for an accessory building (garage) located at Lot 5, Block 2, Plan 3924 HW, Pt. SW 28-47-1-W5, (520 47402 Rge Rd 13, Moonlight Bay).

Chair McDonald called the hearing to order at 8:58 a.m. and provided introductory remarks.

Chair McDonald then called upon the Board secretary to introduce the subject of this appeal.

Joyce Gavan, Clerk, advised of the appeal by Jim Doohan, on behalf of RMD Sales (Robert Dow) against the refusal by the development authority of Development Permit Application D21-190 for an accessory building (garage) located at Lot 5, Block 2, Plan 3924 HW, Pt. SW 28-47-1-W5, (520 47402 Rge Rd 13, Moonlight Bay).



The reason for appeal is as follows:

1. To obtain a variance to Article 9.8.5(b) of Leduc County Land Use Bylaw to allow for a two car garage with a small storage loft.

Clerk Joyce Gavan advised the following information is attached for the Board:

- 1) Notice of ISDAB hearing package dated July 16, 2021.
- 2) Notice of appeal received by Jim Doohan, on behalf of Robert Dow, RMD Sales, on July 13, 2021.
- 3) Notice of decision (refusal) by Development Authority including refused site plan dated July 12, 2021.
- 4) Development Permit Application D21-190 by Jim Doohan, on behalf of RMD Sales (Robert Dow).
- 5) Key Plan.
- 6) Development Authority's report.
- 7) Submission by Jim Doohan, appellant.

The Board confirmed the appeal was submitted properly and acceptable to the Board.

Chair McDonald asked if any Board member felt a need to step down from this hearing within the boundaries of conflict of interest, and there was no one.

Chair McDonald asked if anyone had any objection to any of the members of the Intermunicipal Subdivision and Development Appeal Board hearing this appeal, and there was no objection indicated.

Chair McDonald explained the purpose of the hearing, the order of presentation and the procedures to be followed.

Chair McDonald called upon the Development Authority to provide background information.

Supervisor of Development Services Colin Richards provided a PowerPoint presentation relating to Development Permit D21-190, highlighting the following:

- Appeal relates to a property located in the Moonlight Bay subdivision near the north shore of Pigeon Lake approximately 550 metres east of the Summer Village of Sundance Beach. The property is located and accessed off of range road 474A, is 0.3 acres in size and falls within the Resort Residential district of the Land Use Bylaw. The application was refused because it was deemed not to meet the provisions of the Land Use Bylaw.
- According to County records, the subject property has a summer cottage with an area of 145 sq. metres (1,560 sq. ft.) built in 1994 and a garage of 53 sq. metres (570 sq. ft.) built in 1972. The proposed development will replace the previous accessory building.
- This property is located within the Resort Residential district, where the purpose of the district is to accommodate smaller resort lots in multi-lot residential subdivisions adjacent to a lakeshore having due regard to environmental impacts including the integrity of watersheds, the demands on lake access and adequate provision of utility servicing and roads.

- The district directs that accessory buildings can be a maximum height of 5 metres (16.4 ft.), not to exceed one storey.
- On April 28, 2021, Leduc County Development Authority received a Development Permit application for an accessory building (new garage with a loft). The size of the proposed building is 64.66 m² (695.99 ft.²), and the proposed height is 6.70 metres (22 ft.).
- In accordance with the requirements of this district, the proposed building is higher than the maximum allowable height by 1.7 metres (5.6 ft.) and at two stories by design, includes an addition storey over the maximum allowable stories of one.
- The Land Use Bylaw does make consideration for variances of defined rules and regulations that can be considered by a development officer, however, Part 3.6.2 contains a very specific regulation that states that *the Development Authority shall not grant a variance to site coverage, building area, floor area, building height, and dwellings per hectare.*
- Within the definitions of the Land Use Bylaw, the word shall is specifically identified and defined as *an operative word that means the action is obligatory.*
- What this essentially means is that the Development Authority does not have the authority to issue a variance when the maximum height is specified in the land use district under a 'shall' clause, like in this instance.
- Based on this, the refusal was issued as directed by regulation for the sole reason that the building is over the maximum allowable height and that the Development Authority does not have the powers to issue a variance to prescribed building heights.

Chair McDonald asked if there were any questions by the Board members of Development Authority staff.

In response to questions by Board members, Mr. Richards advised of the following:

- The only item that is not acceptable in the proposed development is the height of the accessory building; everything else is okay.
- This application must be considered on its own merit.
- There are other existing buildings in the area that are similar in design to the proposed building.
- It should be noted that there was a development in the same area approved in error in 2018 by the Development Officer of the time.
- There is no rear lane behind the property. Properties to the north are accessed from the road in front of the properties.

Chair McDonald called upon the appellant Jim Doohan to speak to the proposed development.

Jim Doohan provided the following:

- 1) Fully aware why the Development Authority refused the application to build this garage.
- 2) The second storey is not as big as the first storey and the second storey is set back a bit.
- 3) Requesting a variance to allow for a two car garage with 2nd floor storage.
- 4) The rear of the garage will be 58 feet from the north property line.



- 5) If you look at the photos provided, you can see where the garage will be located on the property. It will be behind the trees. Those trees will not be removed. There is drainage in the back of the property which will also be preserved. Properties to the north will not be able to see the garage as it will be blocked by the trees.
- 6) Any visual impact to the north will be minimal.
- 7) The garage will be sided and trimmed to match the existing structure.
- 8) The Development Authority mentioned that there was a garage on the property which was built in 1972. It has since been torn down.
- 9) This proposed development is consistent with other structures in the area, as referenced in the photos provided.
- 10) Hope that this Board can see that this type of structure is quite common in this area, and further, hopes the Board will consider approving this application.

In response to questions by Board members, Mr. Doohan and Mr. Dow advised of the following:

- The Manitoba maple trees and aspen trees at the rear of the property are higher than 30-40 feet tall.
- The structure reflected in photo #5 was just completed.
- The trees in the rear are on the subject property and there is not intention to remove them.
- This proposed development will blend in and have minimal impact on the community.

Chair McDonald asked if there were any questions by the Board members of Development Authority staff.

In response to questions from Board Member, Mr. Richards provided the following:

- The appeal package was distributed to adjacent landowners and there were no objections or other comments received.
- Unable to provide history of all developments in Moonlight Bay.
- Council added a new regulation to the Land Use Bylaw in 2012 whereby the Development Authority were no longer permitted to grant variances to the height of structures.

Chair McDonald asked if there were any further questions from Board Members.

In response to a question from a Board Member, Mr. Dow advised that the structure in photo #2 went to appeal and was ultimately approved.

Chair McDonald noted there was no one in attendance to speak to the appeal.

Chair McDonald called upon administrative staff to provide final comments.

Mr. Richards provided the following closing comments:

- The proposed development was refused because the Development Authority cannot grant variances to the height of structures.
- Can confirm that this building would not be a detriment to the area.



- Can confirm that there were no objections received from adjacent landowners.
- Can acknowledge that the proposed building would be similar to other buildings in the area.

Chair McDonald then called upon Jim Doohan to make final comments.

Mr. Doohan provided the following closing comments:

- Have provided all the information intended.
- Would like the Board to consider approving this proposed development.

Chair McDonald asked appellant Jim Doohan if he felt he received a fair hearing, and Mr. Doohan responded affirmatively.

Conclusion of Public Hearing

Chair McDonald declared the hearing concluded at 9:24 a.m.

In-Camera

54-21 Board Member Giles -- that the Intermunicipal Subdivision and Development Appeal Board meet in-camera.

Carried

The in-camera session commenced at 9:27 a.m.

Revert to Intermunicipal Subdivision and Development Appeal Board Meeting

55-21 Board Member Rudiger -- that the in-camera session revert to the Intermunicipal Subdivision and Development Appeal Board meeting.

Carried

The in-camera session reverted to the Intermunicipal Subdivision and Development Appeal Board meeting at 9:32 a.m.

Appeal by Jim Doohan, on behalf of RMD Sales (Robert Dow) - refusal by the development authority of Development Permit Application D21-190 for an accessory building (garage) located at Lot 5, Block 2, Plan 3924 HW, Pt. SW 28-47-1-W5, (520 47402 Rge Rd 13, Moonlight Bay).

56-21 Board Member Ruel -- that the Intermunicipal Subdivision and Development Appeal Board allow the appeal by Jim Doohan, on behalf of RMD Sales (Robert Dow), and conditionally approves Development Permit Application D21-190 for an accessory building (garage) located at Lot 5, Block 2, Plan 3924 HW, Pt. SW 28-47-1-W5, (520 47402 Rge Rd 13, Moonlight Bay).

Findings of Fact

1. The proposed development is considered a Discretionary Use within the RR Resort Residential District in accordance with the Leduc County Land Use Bylaw.
2. The appellant is requesting a variance from the Board to allow for a 2-car garage with second floor storage loft at a height of 6.7 m (22 ft.). The proposed development exceeds the maximum height by 1.7 m (5.6 ft.).

3. The development authority was bound to refuse Development Permit Application D21-190 in accordance with Part 3.6.2 that states, "*the development authority shall not grant a variance to site coverage, building area, floor area, building height and dwellings per acre*". Shall is an operative word that means the action is obligatory.
4. The Board did not hear any concerns from neighbouring property owners with the height of the proposed development or any negative impacts to the neighbourhood.
5. The appellant identified where the proposed development would be situated on the subject property showing adequate tree coverage and that no trees will be removed.
6. The appellant presented 9 photographs showing similar 2-storey garage structures exceeding the height restriction of 5.0 m (16.4 ft.) located at Moonlight Bay, Sundance Beach and Itaska Beach.
7. The development authority confirmed the proposed height of 6.7 m (22 ft.) is smaller than that of other nearby properties as identified by the appellant, and that the proposed development would not cause a negative detriment to the area.

The Board considered the following legislation in making their decision:

1. Land Use Bylaw No. 7-08:

The subject property is considered a discretionary use within the RR - Resort Residential. The purpose of this district is to accommodate smaller resort lots in multi-lot residential subdivisions adjacent to a lakeshore having due regard to environmental impacts including the integrity of watersheds, the demands on lake access and adequate provision of utility servicing and roads.

Part 9.8.5(b) provides the maximum height of accessory buildings permitted in this district is 5.0 m (16.4 ft.) and not to exceed one storey.

Part 3.6.2 - notwithstanding 3.6.1, the Development Authority shall not grant a variance to site coverage, building area, floor area, building height and dwellings per hectare.

2. Section 687(3)(c) and (d) Municipal Government Act

In determining an appeal, the subdivision and development appeal board:

- (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 of 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.

In consideration of the legislation stated above, the Board concludes:

- 1) the Board has jurisdiction under Section 687(3)(c) to vary a development permit or any condition;*
- 2) the proposed development conforms with the use prescribed for the land within the RR Rural Residential district of the Land Use Bylaw and will not unduly interfere with the amenities of the area or materially affect the use, enjoyment or value of nearby properties; and*
- 3) that the photos submitted demonstrates the proposed development is consistent with the general intent of the district and the overall character of the area.*

Conditional Approval conditions

In consideration of the above the Intermunicipal Subdivision and Development Appeal Board approves Development Permit Application D21-190, subject to the following conditions:

1. Approval is granted based on the information provided by the applicant for the approved development only and no other development.
2. The approved development shall be located as shown on the approved site plan.
3. The approved accessory building shall be constructed and finished in a manner compatible with the existing building(s).
4. The approved accessory building(s) shall not be used as a dwelling(s) unless specifically approved as a dwelling by a separate development permit.
5. The approved accessory building(s) shall be used as a personal residential accessory building(s) for the storage and maintenance of property belonging to the residents of the parcel and not for business purposes. At no time in the future, unless specifically permitted by the County, shall the accessory building(s) be used for industrial or commercial purposes.
6. The site shall be maintained in a neat and orderly manner including the containment of all construction materials and refuse, to the satisfaction of the Development Authority.
7. The applicant/landowner shall provide fire fighting access at all times to the satisfaction of Leduc County Fire Services.
8. The approach must be maintained to avoid any damage to the County owned road surface due to construction activity. A post development inspection will be conducted and the applicant/land owner must rectify any damage to the approach or County roadway.
9. The movement of construction material onto the property may require the applicant to enter into a Road Use Agreement with the County. The applicant must contact Public Works and Engineering prior to the movement of construction material to discuss this requirement.
10. The development shall not cause any adverse drainage impact on adjacent properties or flooding of nearby ditches in excess of their capabilities.
11. No further development, expansion or change in use is permitted unless approved by Leduc County.

The applicant is also advised of the following:

1. This Development Permit is issued under the Leduc County Land Use Bylaw 7-08. It does not exempt you from compliance with any other municipal bylaw or statutory plan



applicable to the approved development, any relevant federal and provincial statute or regulation, or any easement, covenant, agreement or contract affecting the subject lands.

2. The County administers the Safety Codes Act and you must obtain any Safety Codes (building, electrical, gas or plumbing) permit(s) required prior to commencing construction. Increased setback distances from property lines, and/or modifications to plans for proposed buildings may be required in order to achieve compliance under the Alberta Safety Codes Act.
3. To contact Leduc Public Works & Engineering at 780-979-6185 regarding approach approvals and Road Use Agreements as required.
4. To contact Leduc County Fire Services at 780-955-7099 regarding compliance with the Alberta Fire Code.
5. Please be advised that this development may initiate inspections from the Assessment Department. If you would like to schedule an appointment or have questions, please contact the Assessment Department at 780-955-6412.

Development Permit D21-190 shall expire after one year from the date of decision unless development has commenced.

Carried

Adjournment

57-21 Board Member Maine -- that the Intermunicipal Subdivision and Development Appeal Board meeting be adjourned.

Carried

The Intermunicipal Subdivision and Development Appeal Board meeting concluded at 9:34 a.m.



Chair



Clerk