

CITY OF GRANDE PRAIRIE

P.O. Bag 4000
10205 – 98th Street
Grande Prairie, AB T8V 6V3

SDAB HEARING: 2022-001D

**CITY OF GRANDE PRAIRIE
SUBDIVISION & DEVELOPMENT APPEAL BOARD**

HEARING FILE NO.: 2022-001D

DEVELOPMENT PERMIT NO. PL220261

Tuesday, August 9, 2022

Minutes of the Subdivision and Development Appeal Board (the “**Board**”) hearing of the City of Grande Prairie held in the North Conference room of City Hall at 10205 – 98th Street in the City of Grande Prairie, Alberta on Tuesday, August 9th, 2022.

PRESENT:

L. Coulter	Board Member
A. Nkeuwa	Board Member
J. McFadyen	Board Member
T. Fletcher	Planning & Development
(Development Officer I)	City of Grande Prairie
V. Norris-Kirk	City Clerks
(SDAB Recording Secretary)	City of Grande Prairie
J. Sanderson	City Clerks
(Present for Training)	City of Grande Prairie
C. Scott	City Clerks
(Present for Observation Only)	City of Grand Prairie
S. Stang	City Clerks
(Present for Observation Only)	City of Grande Prairie

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L. Hanson	City Clerks
(Present for Observation Only)	City of Grande Prairie
J. Lieske	Appellant – adjacent property owner
In favour of the Appeal	
J. Nagra	Opposition to Appeal
(Studio Homes)	
P. Vasavan	Property Owner – subject to the appeal
In opposition of the Appeal	

CALL TO ORDER: 1:00 pm

The SDAB Secretary, V. Norris-Kirk, called the meeting to order @ 1:00 pm and introduced herself to the Board and members of the public present.

ELECTION OF CHAIRMAN:

The SDAB Secretary called for nominations for the Chairman. L. Coulter was unanimously elected Chairman of this appeal hearing. **Motion moved by Board Member J. McFadyen. Motion Carried.**

Chairman L. Coulter explained the process of the Subdivision and Development Appeal Board and introductions were made.

Chairman L. Coulter asked if there were any objections to the Board members hearing the above noted appeal. No objections noted.

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APPEAL HEARING:

J. Lieske

Grande Prairie, AB

(Hereinafter referred to as the “Appellant”)

Vs.

City of Grande Prairie

SDAB 2022-001D

Development Permit Application No.: PL220261

Legal Description: Lot 9; Block 15; Plan 202-0990

(13001 – 106th Street)

Chairman L. Coulter introduced the process for conducting the meeting and how the decision will be rendered and notification coming forthwith on the decision from the Subdivision and Development Appeal Board.

Description of Application:

- 1 The appeal before the Subdivision and Development Appeal Board (the “Board”) was brought by J. Lieske, an adjacent neighbour located to the east of the subject property, in opposition of Development Permit PL220261 being approved with a rear yard setback variance of 33% for a covered deck.
- 2 On June 22nd, 2022, the Development Authority approved the development permit application for a Single Detached dwelling with a rear covered deck requiring a 33% variance to the rear yard setback, located at Lot 9; Block 15; Plan 202-0990 (13001 – 106th Street – the “Lands”) in the Royal Oaks neighbourhood. The subject property has a land use designation of General Residential (RG) District and is a permitted use.

Procedural History:

- 3 The hearing commenced on Tuesday, August 9th, 2022, with consideration of procedural issues. The Board determined there were no concerns with procedural issues and had the authority to proceed with the hearing. The hearing concluded on that date.

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Proper Application for Appeal:

- 4 Pursuant to Section 686(1)(b) of the Municipal Government Act, the appeal was filed within 21 days of the date of Notice of Approval issued by the Development Authority.
- 5 Pursuant to Section 686(2) of the Municipal Government Act, the appeal hearing convened within 30 days of the receipt of Notice of Appeal.

Required Notification:

- 6 Pursuant to Section 686(3) of the Municipal Government Act, the Subdivision and Development Appeal Board has given at least five (5) days notice to:
 - The Appellant(s);
 - The Development Authority whose order, decision or development permit is the subject of the appeal;
 - Adjacent / affected landowners required to be notified under the Land Use Bylaw and any other person that the Subdivision and Development Appeal Board considers to be affected by the appeal and should be notified (6 circulated); and
 - Members of the Subdivision and Development Appeal Board.

Decision Timeframe:

- 7 Pursuant to Section 687(2) of the Municipal Government Act, the Subdivision and Development Appeal Board must give its decision in writing together with reasons for the decision within fifteen (15) days after concluding the hearing.

Decision:

- 8 The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. Therefore, Development Permit PL220261 is hereby **REFUSED**.

Appearances:

- 9 The Board received submissions from:
 - a) Ms. T. Fletcher, for the Development Authority;
 - b) Mr. J. Lieske (applicant to the appeal), sent in e-mail;
 - c) Mr. J. Nagra (Studio Homes), in opposition to the appeal; and
 - d) Mr. P. Vasavan, in opposition to the appeal.

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DEVELOPMENT OFFICER'S REPORT:

The Chairman asked the Development Authority, Ms. T. Fletcher to read administration's appeal report for the record.

It is recommended that the Subdivision and Development Appeal Board ("SDAB") deny the appeal and, therefore, uphold the decision of the Development Authority to approve Development Permit PL220261 for the following reasons:

- On January 19th, 2022, City administration approved a development permit for a single detached dwelling with an attached garage, secondary suite, and an uncovered, unenclosed deck for the subject property;
- On June 1st, 2022, the Developer, Studio Homes, submitted a new development permit application, requesting to modify the rear yard deck from an uncovered deck to a covered deck;
- Section 40.1(e) of the Land Use Bylaw C-1260, which states:

"Decks that are covered and/or enclosed from above shall be considered an addition to the principal building. A covered and/or enclosed deck is required to meet the district requirements (outlined in Part Ten) for the principal building and is included in the site coverage calculation"

- The existing uncovered, unenclosed deck that was approved under the original development permit, was approved with a rear yard setback of 5.057 metres (16.59 ft.); which met the setback requirements under the Land Use Bylaw C-1260, section 40.3(b), which states:

"The following applies to all Raised Decks (greater than 0.6m in height) constructed in a residential district:

- a. Raised Decks shall be included in the site coverage calculation; and*
- b. Raised Decks that are uncovered and unenclosed shall be setback 1.2m from the side property line and 4.6 m from the rear property line."*

- With the proposed modification of the deck from an uncovered deck to a covered deck, it now requires a variance of 33% (2.543 m or 8.34 ft.)

- 10 The subject property is located within the Royal Oaks neighbourhood and is zoned General Residential (RG) District in Land Use Bylaw C-1260.

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- 11 The deck that is subject of the appeal will not be moved closer to the rear property line and will maintain a 5.057 m (16.59 ft.) setback.

Administration recommends that the Subdivision and Development Appeal Board deny the appeal and therefore uphold the decision of the Development Authority to approve development permit PL220261 for a covered and / or enclosed deck requiring a rear yard setback variance from 7.6 m (24.93 ft.) to 5.057 m (16.59 ft.).

Chairman asked the board members if there were any questions for the Development Authority.

Questions from the board:

- a) J. McFadyen

What are the blue lines around the house?

Respondent – T. Fletcher

Those represent the eaves of the house

- b) L. Coulter

Is this application to enclose it with just a roof?

Respondent – T. Fletcher

They are looking to put a roof on it and potentially walls, which Mr. J. Nagra and his client can speak to.

- c) L. Coulter

If there is further development there, will it require another development permit, like if it's plumbed, wired, insulated, drywalled?

Respondent – T. Fletcher

If they are looking to change the application they made, they would have to make a new application. The application for this was to cover and / or enclose it. It didn't include any plumbing or anything like that. That would require a completely different application to be submitted.

Mr. J. Nagra added that just the light and features would be included.

- d) J. McFadyen

Has the house been moved forward as close as possible in order to minimize this (degree of variance required)?

Respondent – T. Fletcher

The subject property is as close to the front, with the corner cut off, the house is brought as close forward as it can be brought without interfering with the corner cut off. Because it is an irregular shaped lot, it does make it awkward.

At this time, the Chairman asked Appellant to come forward to present.

PRESENTATION IN “FAVOUR” OF THE APPEAL:

The Chairman asked Mr. J. Lieske to come forward and introduce himself to the board for the record.

12 Mr. J. Lieske introduced himself to the board as an adjacent property owner (east of subject property).

13 Mr. J. Lieske highlighted the following concerns:

- Covered deck is basically an extension of the existing house;
- Deck sits 1.83 m (6 ft.) off the ground, with walls it's going to be 4.27 m + (14 ft. +) in the air;
- Looking out back deck, it's above the fence line which is 1.83 m (6 ft.), so when you bring the proposed enclosed and / or covered deck 2.0 m (6.56 ft.) closer than it's supposed to be as a wall vs. a deck it's a big difference;
- It's going to be ugly; it shouldn't be approved; it should only be approved for what they can put on the lot;
- They built the house; they knew the lot and there is no reason why they can't comply with regulations;
- It's going to be intrusive and aesthetically ugly no matter what you do with it; and
- Would rather have it 2.0 m (6.56 ft.) back or a regular deck to comply with the regulations.

At this time, the Chair, Mr. L. Coulter asked if there was anyone present in favour of the appeal. There were no other participants present, in favour of the appeal.

REBUTTAL OF THE DEVELOPER – IN OPPOSITION OF THE APPEAL

14 Mr. J. Nagra indicated that:

- Property was pre-sold at 13001 – 106th Street (subject property to the appeal);
- Due to health issues of the new home owner(s), the developer applied for a new development permit to cover the deck;
- Whether the deck stays “as is” or is covered, the height will stay the same because it's a bi-level home;

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- The only thing being proposed is to add a roof onto the existing deck; and
- If the appellant has a concern with the height of the deck, Mr. J. Nagra indicated that he would work with the appellant, Mr. J. Lieske, to lower the deck so that the owners are not overlooking the deck, which appears to be the main concern of the appellant.

REBUTTAL OF THE APPELLANT – IN OPPOSITION OF THE APPEAL

15 The appellant responded with the following:

- There is a big difference in intrusiveness with a deck and railing vs. a wall and a roof; and
- The railing and floor are not a big deal but, it's when walls and a roof are added, would like to see the regulations followed.

In summary, the appellant believes the proposed enclosed deck would be intrusive and aesthetically ugly.

At this time, the Chairman, Mr. L. Coulter asked if there was anyone else present in favour of the appeal. There were no other participants present, in favour of the appeal.

PRESENTATION IN "OPPOSITION" OF THE APPEAL:

The Chairman asked those in opposition of the appeal to come forward and introduce themselves to the board.

16 Mr. P. Vasavan introduced himself to the board as the owner of the subject property, in opposition of the appeal.

17 Mr. P. Vasavan highlighted the following reasons for the boards consideration on why they should permit the deck to be covered:

- Indicated that when they started the initial development permit process his wife was well; however, she recently has been suffering a medical condition and as a result, the treatments she needs makes it difficult for her to be exposed to the sun;
- Mr. P. Vasavan, reached out to the developer to see about having the deck covered to minimize the sun exposure; and
- Further, Mr. P. Vasavan indicated that she would need some outside exposure; however, that would not be possible if the deck was not covered.

CLARITY FOR THE RECORDING SECRETARY

The recording secretary, V. Norris-Kirk, requested clarity for the record on what was being proposed.

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Mr. J. Nagra clarified and indicated that it would be an A-frame roof to match the existing home so that it fits into the overall exterior and one side wall. The one wall would be on the south side.

Questions from the board:

a) J. McFadyen

Whether the deck is 1.83 m (6 ft.) in the air or on the ground, it would still require a variance – correct?

Respondent – T. Fletcher

As a covered deck, yes.

b) J. McFadyen

If it was lowered and not a visual obstruction to the adjacent property would it still require the permit as a covered deck?

Respondent – T. Fletcher

Yes, as soon as the roof is proposed. The Land Use Bylaw states that as soon as it's covered or enclosed from below to make it a solid bottom, like storage, once either one of those is proposed, then it's to be considered an addition to the principal dwelling and must therefore meet the setbacks of a principal dwelling unless a variance is approved.

c) J. McFadyen

When people go to Ikea or Costco and buy one of those pergolas, and place it in their existing backyards, is that technically illegal?

Respondent – T. Fletcher

If it's attached to the dwelling it's considered part of the principal dwelling. If it's placed out in the backyard it still requires a permit if it's over a certain square footage as it would be considered part of the lot coverage. Yes, they would need to have a permit as they are a structure placed in the yard.

The Chairman, L. Coulter asked if there were any follow up questions.

Questions from the Developer – Opposition to the Appeal:

1) Mr. J. Nagra

What's the alternative?

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Respondent – J. Lieske – in favour of the appeal

A regular deck.

Respondent – J. Nagra – in opposition of the appeal

A regular deck is going to come with it anyways.

In summary, the developer would like the board to consider allowing the proposal of a covered deck to remain as proposed.

At this time, the Chair, Mr. Coulter asked if there was anyone present in opposition of the appeal. There were no other participants in opposition of the appeal.

Chairman L. Coulter advised all present and participating in the appeal that they can expect an “unofficial” verbal decision within 24 hours of the hearing and an “official” written decision within 15 days.

Chairman L. Coulter declared the Subdivision and Development Appeal hearing closed at 1:24 p.m.

DECISION OF THE BOARD:

The Subdivision and Development Appeal Board determined that the appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. Development Permit PL220261 is hereby **REFUSED**.

REASONS FOR THE SDAB DECISION:

The Board considered the written and oral evidence submitted by all parties.

The grounds for the appeal are pursuant to section 685(1)(b) and (2) of the Municipal Government Act, which states:

Grounds for Appeal - Municipal Government Act

685(1)(b) and (2) If a Development Authority

(b) issues a development permit subject to conditions

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

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The Subdivision and Development Appeal Board revoked the decision of the Development Authority and refuses Development Permit PL220261 for the following reasons:

1 Compliance with the MGA and Land Use Bylaw C-1260

The Board reviewed all evidence and arguments, written and oral, submitted by the parties and will focus on key evidence and arguments in outlining its reasons. The Board has considered the context of the proposed development, applicable legislation:

- Municipal Government Act (“MGA”); and
- Land Use Bylaw C-1260, specifically Section 40 – Decks, Section 19 – Variance Authority and Section 83 – General Residential District (RG).

2 The proposed development, covered deck, is now considered part of the principal building, and therefore must meet the same setback requirements of the principal building as stated in Section 40.1(e) of the Land Use Bylaw C-1260, which states:

“40.1 The following applies to all decks constructed within a residential district

(e) Decks that are covered and/or enclosed from above shall be considered an addition to the principal building. A covered and/or enclosed deck is required to meet the district requirements (outlined in Part Ten) for the principal building and is included in the site coverage calculation.”

3 When considering a variance, the Development Authority or the Subdivision Appeal Board must consider Section 19.11(a), (b), (c) and (e) of the Land Use Bylaw C-1260, which states:

19.11 Variances to standards in this Bylaw with regard to the affected property shall only be considered if:

- (a) It is practically difficult to comply with the regulations of this Bylaw due to peculiar conditions or circumstances including, but not limited to, the area/shape of the property and/or environmental features;*
- (b) The proposed variance will not alter the character of the neighbourhood and will not negatively affect other properties or potential development in the surrounding area;*
- (c) The proposed variance does not interfere with or affect the use and enjoyment of adjacent/surrounding properties;*

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(e) The proposed variance is the minimum deviation from the required standards of this Bylaw to relieve the effect of the peculiar conditions or circumstances.

The Board concluded that:

- (a) Although the area / shape of the property provides some challenges to meeting setback requirements, no parties, including the Development Authority, Appellant or Developer in opposition of the appeal cited this as a reason of concern or a reason to consider supporting a variance. The Developer and the property owner cited medical reasons as to why the board should consider supporting the proposed variance. The board can only consider sound planning reasons; and therefore, did not weigh the medical reasons in consideration of an irregular shaped lot that may have posed challenges therefore requiring a variance.
- (b) The application was deemed incomplete by the board members. There were no elevation drawings provided that showed what the exterior finishes were going to be and how they would fit in with the character of the neighbourhood; therefore, making it difficult for them to determine whether or not it would negatively affect adjacent property owners.
- (c) The elevation drawings that were provided showed a roof line, proposing to enclose the deck; however, at the hearing it was clarified that there would also be one wall installed to the south. This was determined to be a contradiction on the application vs. what was clarified at the hearing, making it difficult for the board members to determine how impacts to an adjacent landowner would be minimized if they were to consider the variance as presented.
- (d) The board determined that the variance requested was not a minimum deviation from the required standards, and concurred with the appellant that it would be intrusive on the adjacent neighbour as they are located immediately to the east of the subject property where the properties sit back to back with no break in between the property boundaries.
- (e) The board determined that the developer failed to show how all options were explored prior to seeking a variance. The Land Use Bylaw C-1260 provides a generous building envelope for construction and it is anticipated that development will occur within these rules.

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- (f) The minimum building setback rules are intended to provide a visual and physical separation from property lines as well as to maintain a consistency in the pattern of site development. In the opinion of the board, the addition of a closed deck, in close proximity to the adjacent properties, creates an obtrusive building mass that is uncharacteristic in the neighbourhood.

As a result, and in consideration of the above and having regard to planning principals, the Board is of the opinion that Development Permit PL220261 could have an impact on the adjacent property; therefore, the development permit for the proposed enclosed deck is hereby refused.

Based on the evidence before the Board, the Board hereby revokes the decision of the Development Authority and refuses Development Permit PL220261 in accordance with Section 687(3)(a.1)(a.2)(a.3) and (c) of the MGA.

Subdivision and Development Appeal Board

City of Grande Prairie

Signed this 12th day of August 2022.



Chairman L. Coulter



SDAB Secretary – V. Norris-Kirk