

**NOTICE OF DECISION
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
CITY OF SPRUCE GROVE**

Pursuant to Part 4 of the City of Spruce Grove Land Use Bylaw C-824-12 (the “Land Use Bylaw”), as amended, and Part 17, Division 10 of the *Municipal Government Act*, RSA 2000, cM-26, as amended.

DATE OF DECISION: November 3, 2023

IN THE MATTER OF: An appeal by Alquinn Homes Ltd. against the refusal of Development Permit Decision PLDPR202300768, to allow for reduced side yard setbacks of the existing detached garage located at 142 Harvest Ridge Drive (Plan 142-4670, Block 11, Lot 52).

DATE OF HEARING: October 25, 2023

SUMMARY OF THE HEARING:

- [1] Notice of the appeal was given to all interested parties in accordance with the Land Use Bylaw and the requirements of the *Municipal Government Act* and a hearing was held in Council Chambers at 315 Jespersen Avenue, 3rd Floor, on October 25, 2023.
- [2] The following members of the Subdivision and Development Appeal Board were in attendance throughout the hearing:
- Paul Hanlan, Chair
 - John Fraser, Board Member
 - Liam McGrath, Board Member
 - Tim Ormsbee, Board Member
 - Tim Tully, Board Member
- [3] Jennifer Maskoske served as Clerk to the Board for the hearing. No persons present voiced any objections to the Clerk assigned to this hearing or the role of the Clerk.
- [4] Following an introduction of the Board and the Chair outlining the hearing process, no persons present voiced any objections to the members of the Board hearing the appeal and the process of the hearing as outlined by the Chair.

- [5] The Board received and considered written submissions from each of the following:
- Development Officer's Report
 - Development Officer's PowerPoint presentation
 - Appellant Alquinn Homes Ltd. Written Submission represented by John McCaffray
- [6] The following persons were in attendance at the hearing of the appeal and made oral submissions which were considered by the Board:
- Tanya Oullette, Development Officer
 - Alquinn Homes Ltd., represented by John McCaffray, Appellant
- [7] All those who provided evidence at the Hearing indicated that they had a fair hearing.

SUMMARY OF EVIDENCE

- [8] The Board marked the following documents as exhibits in the hearing. There were no objections to them being marked as exhibits:

Exhibit	Description
1.	Timelines
2.	Development Permit Application
3.	Development Permit Decision
4.	Notice of Appeal - Alquinn Homes Ltd.
5.	Notice of Hearing
6.	Adjacent Property Owner List (Confidential)
7.	Site Plan Showing Adjacent Property Owners
8.	Subject Location (Maps)
9.	Development Officer's Report
10.	Appellant Submission
11.	Development Officer additional exhibit

- [9] The Development Officer submitted an additional document as evidence for the Board; an Inspection Report from September 12, 2023, identifying a failed building inspection for the development. This document was accepted as information and marked as exhibit 11.

- [10] The Board heard oral testimony from Tanya Ouellette, Development Officer, including:
- A summary of the content of Development Officer's report (Exhibit 9) and a PowerPoint presentation
 - Answers to questions from the Board including:
 - The Land Use Bylaw does not identify a maximum variance allowed to be given.
 - The package presented to the Board identified the items that were a violation of the Alberta Building Code.
 - As the development currently sits, the allowance for unvented soffits, fire guarding walls are not possible in this scenario.
 - The construction of the development in the current location was done without consultation with City administration.
- [11] The Board heard oral testimony from the Appellant Alquinn Homes Ltd., represented by John McCaffray including:
- John McCaffray is an employee of Alquinn Homes Ltd. and is representing the appellant.
 - John McCaffray spoke to the process followed to complete the development permit application process.
 - He provided concerns that other developments in the area have setbacks less than the one meter allowance of the bylaw.
 - He spoke to other neighbourhoods there are zero lot line development where garages can be built right up to the property line.
 - It was asked for consideration on how builders on zero lot line developments can treat both side walls of the garage, non-vented soffit, dense glass on the outside and full drywall on the inside.
 - He provided the encroachment for the back of the garage facing the alley is 8 inches on one side and 10 inches on the other side.
 - Answers to questions from the Board including:
 - The Appellant stated that the property has been sold in the condition it is in, with hopes of receiving the variance. If the variance is not approved, the other option is to take the garage down and build it narrower
 - The Appellant stated they were unsure of how far back the development would have to be moved to meet the setback requirement; however did reference zero lot line development allowing for acceptable treatment in non-vented soffit, dense glass, and fully drywall which stops the potential fire spread.

RELEVANT LEGISLATION

- [12] The Board considered the following in its decision:

Land Use Bylaw

- Land Use Bylaw Section 4 - Other Legislative Requirements

- Land Use Bylaw Section 7 - Definitions
- Land Use Bylaw Section 14 - Variances
- Land Use Bylaw Section 53 - Accessory Building

Municipal Government Act

- MGA Section 642(1)
- MGA Section 687

DECISION

[13] Having considered all relevant planning evidence presented at the hearing, the arguments made and the circumstances and merits of the application and the appeal, and having regard for the relevant provisions of *Municipal Government Act*, any applicable statutory plans, the Matters Related to Subdivision and Development Regulation, AR 84/2022 and the C-824-12 Land Use Bylaw, this appeal is denied and Development Permit No. PLDPR202300768 is hereby refused.

REASONS:

- [14]
1. John McCaffray represented Alquinn Homes Ltd., builder of the accessory building on which the proposed use is located. As a result of Alquinn Homes Ltd. being the builder of the accessory building, the Board finds that they are an affected party.
 2. The lands on which the accessory building is situated on, are governed by R1 - Mixed Low to Medium Density Residential District of the Land Use Bylaw.
 3. The accessory building is the construction of a detached garage.
 4. A detached garage is a permitted use in the R1 - Mixed Low to Medium Density Residential District.
 5. Under section 642(1) of the *Municipal Government Act*, when a person applies for a development permit in respect of a permitted use, the Development Authority, and on appeal, the Board, must approve the application provided that the application otherwise conforms to the Land Use Bylaw. In this case, the application requires adherence to Land Use Bylaw Section 53(d) which provides regulations on how close accessory buildings shall be located to the side property line on lands districted R1 - Mixed Low to Medium Density Residential District.

6. The Board examined whether the design and current location of the detached garage in the R1 - Mixed Low to Medium Density Residential District complied with the requirements in Section 53 of the Land Use Bylaw.
7. The regulations under the Land Use Bylaw Section 53(d) states:

“Unless otherwise provided in this Bylaw, Accessory Buildings shall be located:
(d) No closer than 1.0 m to the side property line.”
8. The Board heard evidence from the Development Officer that the detached garage is a permitted use in the R1 - Mixed Low to Medium Density Residential District. However, the detached garage does not meet the site requirements as required under Section 53(d) of the Land Use Bylaw. The evidence is that the garage is located approximately .75 m from the property line, which does not meet the requirements in Section 53 of the Land Use Bylaw. Both the Appellant and the Development Officer agree that this side yard setback is not met. The Board finds as a fact that the detached garage does not meet the requirement that the accessory building be located no closer than 1.0 m to the side property line as required by Section 53.
9. The Appellant’s request is to vary the requirement of Section 53 and to grant a variance of that setback. As a result, the Board must consider whether to grant the variance. In so doing, the Board has had regard for Section 687(3)(d) of the *Municipal Government Act*. The Board must consider whether the variance would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. If the Board is of the opinion that either of these would occur, the Board can refuse to grant the variance.
10. The evidence of the Development was that these development setback areas are intended to act as a buffer between uses. These buffers are put in place for the protection of privacy, drainage and safety.
11. The Board has considered the reasons why the side yard buffers have been made a requirement in the Land Use Bylaw. Having the garage within 1.0 m to the side property line means that there is little space for safety. The garage as sited is close to the property line. Should there be a fire, the Board infers the reduced side yard may contribute to a fire risk. The Board also notes that there may be impacts to privacy.

12. In hearing the comments raised by the Appellant on the potential to change the detached garage to meet the requirements of a zero lot line development, the Board was satisfied by the Development Officer's response. The Development Officer stated that the detached garage would not comply in the area due to the regulations in Spruce Grove which include a garage can be built to the property boundary, however the adjacent property has a 1.5m maintenance easement for the eaves to encroach up to 0.3m and has to be a minimum of 0.9m between eaves. These requirements are not met in the current situation.
13. The Board considered the evidence submitted by the Appellant about other properties with side yards which the Appellant indicated did not meet the required side yards. The Board did not receive full information about those properties. There was insufficient evidence to show whether the circumstances of those properties are the same as in the case before the Board. Therefore the Board is unable to place a great deal of weight on this evidence.
14. In considering the submissions of the parties, the Board notes that the Appellant had proposed some safety measures. The Board received little information about the efficacy of these measures and was not persuaded that these measures would address the concerns. The Board heard no evidence about the impact of the proposed changes and their effect on safety. As a result, the Board is of the view that the variance would cause a material interference with the use and enjoyment of the neighbouring property.
15. The Board concludes that the application does not comply with the requirements for an accessory building in the R1 - Mixed Low to Medium Density Residential District of the Land Use Bylaw and the Board is not prepared to grant the requested variance.
16. For these reasons, the decision of the Development Authority is confirmed and the appeal is denied.

Dated at the City of Spruce Grove in the Province of Alberta, November 3, 2023

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Jennifer Maskoske

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Jennifer Maskoske, Clerk, on behalf of
Paul Hanlan, Chair
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

NOTICE:

If you wish to appeal this decision, you must follow the procedure prescribed in Section 688 of the *Municipal Government Act*. An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to a decision of the Subdivision and Development Appeal Board. An application for leave to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed.