

REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET
RED DEER AB T4N 1X2
403-343-3394

July 14, 2022

NOTICE OF DECISION

RE: Appeal of Refusal of Development Permit Application 22-057 on Lot 7, Block 1, Plan 971 1625 at 6206 60 Street, Olds

SUMMARY OF APPEAL

This is an appeal of a refusal of a development permit application for a fence that would extend beyond property boundaries and onto the municipal boulevard. The application was refused by the Town of Olds Municipal Planning Commission. The Appellant/Applicant, Danny Reid, appealed the decision. The reasons for the appeal are based on the desire to create a secure enclosure for a work related vehicle (welding truck) where there is insufficient space on the existing driveway to accommodate the truck and the ability to open the doors of a garage in front of which the truck would park.

Notice of the appeal was provided to interested parties and a hearing was held on June 30, 2022.

Hearing Panel: Joe Henderson, Chair
Heather Ryan, Board Member
Lynda Petten, Board Member

SDAB Clerk: Craig Teal

BACKGROUND OF THE APPLICATION

The Development Authority, being the Town of Olds Municipal Planning Commission, refused Development Permit application DP22-057 on May 19, 2022. The subject site is Lot 7, Block 1, Plan 971 1625 located at 6206 60 Street. The subject site is designated R1 – Low Density Residential District under the Town of Olds Land Use Bylaw. A fence is a form of residential accessory building allowed in this District. The Applicant requested approval for a fence that extends beyond the boundaries of the subject site and onto the Town boulevard along Park Meadows Place.

In their reasons for refusing the application, the Municipal Planning Commission noted the following:

1. A fence can reasonably be constructed along the side property line without the need for the variance requested.
2. The rationale provided by the applicant does not sufficiently support the relaxation of the regulations in the Town of Olds Land Use Bylaw.

An appeal was filed with the Regional Subdivision and Development Appeal Board on May 31, 2022 by the Applicant for DP 22-057. Affected parties were notified on June 7, 2022, with public notification being distributed on June 7, 2022 and June 21, 2022.

MERIT HEARING

Summary of the Development Authority's Submissions

The application was presented to the Town of Olds Municipal Planning Commission (MPC) on May 19, 2022. It involved a variance to allow a fence and gate to go beyond the property line and into the Town boulevard. The request exceeds the variance powers of the Development Officer. The applicant was making the request to be able to extend a secure fence and gate around a truck parked in front of the existing garage on the property. As the doors of the garage swing outwards there is not enough space on the property to park a truck and open the garage doors and keep the fence and gate on the property line.

The site plan reviewed by MPC showed the fence extending out into the boulevard a uniform depth of approximately 1.23m. MPC discussed the rationale for the request and had questions about using the parking pad beside the garage to park the truck. It was noted that the trailers are stored in this area and the truck is too long to fit between the property line and garage.

MPC refused the application. MPC acknowledged that a gate along the property line would not fit the truck but was of the view that alternative storage arrangements could be used to avoid extending the fence into the boulevard. MPC was also of the view that a fence along the property line could be built around the existing tree within the property boundaries.

The Development Authority indicated that if the Board approves the application, the recommended conditions of approval should include the following:

1. The development must be constructed in accordance with the approved plans and conditions. Any revisions to the approved plans (including non-completion of the development) must be submitted for approval to the Development Authority.
2. A variance is granted to allow the fence to be located on the public boulevard.

3. The maximum height of fences in a side yard is 2m.
4. Prior to construction, the applicant must enter into an Encroachment Agreement with the Town to be registered on the title of the subject property.
5. If the development authorized by a development permit is not commenced within 12 months from the date of issue, nor carried out with reasonable diligence, such permit approval ceases and the permit itself is deemed void, expired, and without effect, unless an extension of this period has been previously granted.
6. The Development Officer may, by notice in writing, suspend a Development Permit where development has occurred in contravention to the terms and conditions of the permit and/or Land Use Bylaw.
7. Use and development of the subject site shall conform to all other applicable requirements of the Town of Olds Land Use Bylaw 01-23 except where a relaxation has been expressly granted.

The Development Authority also noted that Town Administration has no objection to the encroachment and would be willing to enter into an encroachment agreement since there are no utilities in or rights of way over this section of boulevard and it is along a local road.

Summary of the Appellant/Applicants' Submissions

The Appellant/Applicant indicated that security of the welding truck and trailers used for his trade is the main concern and reason behind the request to have the fence extend beyond the property line. The request is to allow the fence with metal gates to enclose a portion of the Town boulevard and back yard to ensure security of the work truck and trailers. The garage doors swing outwards which does not allow enough room for the truck to be parked in the driveway and stay within the property line. The 1.2m variance to extend the fence into the Town boulevard is meant to provide space to park the work truck in front of the existing garage.

The fence extension into the boulevard is also intended to go around a healthy evergreen tree that is on the property line. The Appellant would like to avoid a fence that would conflict with two other trees on the property. This means the fence would be better going around them towards the street rather than towards the house.

The Appellant indicated their willingness to agree to a waiver with the Town if needed to allow them to be on Town property.

Summary of Other Party Submissions

Two separate emails were received from adjacent landowners who did not attend the hearing. Their emails were read into the record. Both supported the variance to allow the fence as a means of deterring further theft from the commercial vehicle thereby contributing towards the security of the area.

KEY FINDINGS OF FACT

The Board makes the following key findings:

1. The subject site is in the R1 District of the Town of Olds Land Use Bylaw and a fence is considered an accessory residential building which is a permitted use in this District.
2. The Town of Olds Land Use Bylaw does not contain many specific regulations for fences. The regulations that exist indicate fences are expected to be in the yards of the property to which they relate. Going beyond the yard would constitute a variance.
3. Part Two, Section 2.3, Subsection (4) of the Town of Olds Land Use Bylaw allows the Municipal Planning Commission to consider and approve variance requests for up to 100 percent of any standard. This includes the requirement for a fence to be situated within a yard of the subject property that it serves.
4. The Town of Olds has the ability to require an encroachment agreement before items such as the proposed fence, can be built in the Town's road allowance.

DECISION

The appeal filed by Danny Reid is denied and the decision of the Development Authority to refuse the application is upheld.

REASONS FOR DECISION

The Board determined that the proposed fence and gate is an allowable permitted use for the subject property. The one regulation that the fence and gate does not meet is the requirement to place these items within the boundaries of Lot 7 being the site of the principal use to which the fence and gate relate.

The Board is able to grant a variance to this regulation subject to the conditions set out in Section 687(3)(d) of the *Municipal Government Act*. The Board may make a decision on a development permit even if it 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.”

The Board is satisfied that subsection (ii) of the above has been met as a fence and gate is considered an accessory residential building.

The Board is also satisfied that subsection (i)(B) of the above has been met as the proposed fence and gate would not restrict or materially interfere with the ability of owners of neighbouring parcels to use and enjoy their land. The abutting property to the northeast is separated by a row of mature trees that blocks much of the view of the back yard of Lot 7. The property to the northwest is across a local road.

The Board is not satisfied that subsection (i)(A) has been met. In the Board’s opinion the proposed fence and gate extending beyond the property lines and into the public boulevard unduly interferes with the amenities of the neighbourhood. The Board notes that the subject site is located on a local road leading into an attractive residential area. The potential to detract from the amenities of the area relate to:

1. The effect a fence into the boulevard would have on the visual appeal along the right of way of Park Meadows Place and the narrowing up and loss of sense of openness due to the placement of a six foot tall fence and gate closer to the sidewalk and road than is characteristic of other streets and properties in the area;
2. The potential interference with the use of the sidewalk by others due to the swing of 10ft gates that open outwards into the road allowance and over the sidewalk and parking lane; and
3. The contribution the fence and gate would make to keeping more vehicles and trailers on the site than may be appropriate in a residential area and which appears to be creating a “spill over” into the adjacent public space.

Finally, the Board agrees with the Municipal Planning Commission that alternative arrangements of the items stored and placed on the property seem to be possible and that this would alleviate the need to occupy publicly owned space for private purposes.

CLOSING:

This decision can be appealed to the Court of Appeal on a 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 the date of this decision.

Dated at Ponoka County, in the Province of Alberta this 14th day of July, 2022 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



Joe Henderson, Chair

APPENDIX "A"

PARTIES WHO ATTENDED, MADE SUBMISSIONS, OR GAVE EVIDENCE AT THE HEARING:

<u>Name</u>	<u>Capacity</u>
Danny Reid and Rhonda Reid	Appellant/Applicant
Kyle Sloan	Development Authority

APPENDIX "B"

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

<u>Reference Tab</u>	<u>Item</u>
TAB A	Notice of Appeal
TAB B	Application
TAB C	Development Permit Issued
TAB D	Information Provided by Development Authority
TAB E	Notices

DOCUMENTS RECEIVED DURING THE HEARING:

<u>Reference Tab</u>	<u>Item</u>
TAB F	Email submission from Louis and Diane Belcourt
	Email submission from Mike Schell and Debbie Rogers